

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 7752 OF 2017

MOHAMMED ISMAIL NAWAZSAB SHAIKH
VERSUS
PRAKASH KODIRAM PAWAR AND OTHERS

...

Advocate for the Petitioner : Shri Madde Shrikant B.

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 04th October, 2017

Per Court:

1 The Petitioner is aggrieved by the order dated 03.01.2017 by which the Trial Court has rejected application Exhibit-30 and refused to appoint a court commissioner.

2 I have considered the strenuous submissions of the learned Advocate for the Petitioner and the seven grounds formulated by him in the memo of the petition.

3 Exhibit-30 was filed when the application for temporary injunction (Exhibit-5) was pending. It was stated in Exhibit-30 that the suit plots be measured and the area be demarcated as per the Sale Deed. The Trial Court has rejected Exhibit-30 on the ground that there is no dispute as regards the boundaries.

4 The learned Advocate for the Petitioner submits that the

boundaries are disputed and the recording of oral evidence has commenced. The Defendants have claimed that they are in possession of the suit property.

5 This Court has consistently held in several judgments that a court commissioner is not to be appointed before the recording of oral evidence except in rare and peculiar circumstances. It has been consistently ruled that a court commissioner could be appointed if there are boundary disputes, for locating boundaries, fixing boundary map and even for indicating encroached areas.

6 Considering the above and the fact that Exhibit-30 was filed before the commencement of the recording of oral evidence, I do not find any reason to entertain this petition. The Writ Petition is, therefore, dismissed.

7 It is, however, made clear that after the recording of oral evidence, if either of the litigating sides move an application for appointment of a court commissioner, the Trial Court would consider the same on its own merits and without being influenced by the observations set out in the impugned order dated 03.01.2017.