

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.11311 OF 2017
(Changunabai w/o Rambhau Khodade Vs. Nandabai Kailash Ingavale
and another)

Mr.D.B.Rode, Advocate for the petitioner.

(CORAM : Ravindra V.Ghuge, J.)
DATE : 18/09/2017

PER COURT :

1. The petitioner is aggrieved by the order dated 03/07/2017 by which the Trial Court has rejected application Exh.87 and declined the appointment of a Court Commissioner.

2. I have heard the strenuous submissions of the learned Advocate for the petitioner/original plaintiff. He has drawn my attention to the 10 grounds formulated by him in the memo of the petition. With his assistance, I have considered the petition paper book.

3. I find from the record that a Court Commissioner was already appointed on 2 occasions. On one occasion, the report of the Court Commissioner was submitted on 27/05/2008. The second Court Commissioner has submitted his report on 09/07/2015. Grievance of

the plaintiff is that the Court Commissioner's report dated 09/07/2015 is a result of a collusion between the defendant and the Court Commissioner. Two different maps are placed on record.

4. The Trial Court has noticed that the second Court Commissioner was the TILR who has submitted his report alongwith a map on 09/07/2015. The said Court Commissioner is yet to be examined and at a pre-mature stage, the plaintiff claims that the report is defective and the map is also defective.

5. I find that the Trial Court has rightly concluded that unless the defect in the report and in the map is not proved by following the due procedure, mere averment that the map and the report is defective is not sufficient to appoint a third Court Commissioner. I do not find the impugned order to be perverse or erroneous. This petition, being devoid of merit, is therefore, dismissed.

(Ravindra V.Ghuge, J.)