

IN THE HIGH COURT OF JUDICATUR OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11406 OF 2017

LAXMAN PRALHAD RAUT
VERSUS
SHRIMANT NARSU RAUT AND ANOTHER

Advocate for Petitioner : Mrs. M.A. Kulkarni.

CORAM : RAVINDRA V. GHUGE, J.

Dated : 20th September, 2017

PER COURT :

1. The petitioner is aggrieved by the order dated 23/06/2017, by which, the Trial Court has rejected application Exhibit 40 filed by the petitioner/plaintiff seeking an appointment of the Court Commissioner under Order XXVI Rule 9 of the C.P.C.

2. Mrs. Kulkarni, learned advocate for the petitioner has strenuously criticized the impugned order. She has drawn my attention to the six grounds formulated in the memo of the petition.

3. In the light of the submissions of the petitioner, I have perused the prayer put forth below Exhibit 40. The prayer indicates that the petitioner desires that the Deputy Superintendent of Land Records should be appointed as a Court Commissioner and he would measure land Survey No. 32 and 33 with Survey No. 14, and locate the broken Bandh and restore the Bandh, so also to investigate how much encroachment has been done by the defendant and thereafter, to submit his report and a map.

4. A cursory look at the prayer in Exhibit 40 would indicate that the petitioner virtually seeks to appoint the Court Commissioner to collect evidence. Though, issues have been cast in the matter, as per the statement of the petitioner, recording of oral evidence has yet not commenced.

5. Considering the above, I do not find that the prayer put forth by the petitioner in Exhibit 40 could have been entertained by the Trial Court by appointing the Court Commissioner.

6. This petition being devoid of merits, is therefore, dismissed.

7. It is, further, made clear that if the recording of oral evidence has commenced in R.C.S. No. 117/2016, either of the litigating side would be at liberty to make an application for seeking appointment of a Court Commissioner and if such an application is filed, the Trial Court would consider the same on its own merits.

(RAVINDRA V. GHUGE, J.)

S.P.C.