

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

WRIT PETITION NO. 1096 OF 2018

SHANTABAI PRALHAD ANANTWAD
VERSUS
TAHSILDAR TAHSHIL OFFICE LATUR AND OTHERS

...
Advocate for the Petitioner : Shri Pokale Dnyaneshwar B..
AGP for Respondents 1 and 2 : Shri S.K.Tambe.
...

CORAM: RAVINDRA V. GHUGE, J.
DATE :- 31st January, 2018

Per Court:

1 The Petitioner/ original Plaintiff is aggrieved by the order dated 08.01.2018 passed by the Trial Court by which, the application Exhibit-24 filed by the Petitioner seeking the appointment of a court commissioner under Order 26 Rule 9 of the Code of Civil Procedure, has been rejected.

2 The learned Advocate for the Petitioner has strenuously criticized the impugned order. It is contended that the suit has been filed for seeking permanent injunction. Though the Defendants have denied the contentions of the Petitioner, as there is no cart way available from the suit land for a long time, the Defendants are trying to create a new cart way from the land of the Plaintiff. It was for this purpose that local inspection was sought by the Plaintiff.

3 This Court, in a series of orders as in Gangaram Baban Tagad.

and others vs. Sarubai Yashwant Tagad and others, Writ Petition No.6700/2011 decided on 12.06.2013 (Coram : Justice S.VGangapurwala, J.), has held that the Court Commissioner is normally not to be appointed before the recording of oral and documentary evidence. It is in the rarest of rare case that such an order could be passed.

4 In the case in hand, the grievance of the Petitioner/ Plaintiff is that the Defendants are trying to create a new cart way and hence, the Court Commissioner be appointed. The Court Commissioner can neither be appointed on an apprehension of the litigating sides, nor for collecting evidence. In the event, the Defendants commit any encroachment, the Petitioner can prove the said aspect by leading oral and documentary evidence. Before the recording of evidence has commenced, the Court Commissioner should not be normally appointed.

5 Considering the above, this Writ Petition is dismissed.

6 However, it be noted that after recording of oral evidence, if either of the litigating sides make an application for appointment of a court commissioner, the Trial Court would consider the same on it's own merits and without being influenced by it's observations set out in the impugned order dated 08.01.2018.