

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

WRIT PETITION NO. 2420 OF 2017

**DURESHABEE SHAIKH YAKAT ALI
VERSUS
SHAIKH GAFOOR SHAIKH CHHOTU**

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Advocate for the Petitioner : Shri N. P. Bangar
Advocate for the Respondent : Ms. A. V. Gangakhedkar

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 28th NOVEMBER, 2018.

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PER COURT :

1. The petitioner- original plaintiff is aggrieved by the order dated 03/01/2017, by which, her application Exhibit 7 seeking appointment of a court commissioner in RCS No. 712/2016 has been rejected.

2. I have heard the strenuous submissions of the learned Advocate for the petitioner. The learned Advocate for the respondent has defended the impugned order.

3. This Court has, in the following judgments /orders, consistently taken a view that a Court Commissioner

should not be appointed until the recording of oral evidence is concluded :

1. Gangaram Baban Tagad and others Vs. Sarubai Yashwant Tagad and others (WP No.6700/2011 dated 12/06/2013)

2. Shantabai Pralhad Anantwad Vs. Tahsildar, Tahsil Office Latur and others (WP No.1096/2018 dated 31/01/2018)

3. Syed Mushtaque Ahmad Syed Ismail and others vs. Syed Ashique Ali Khan Haidar Ali, 2012 (1) ALL MR 80 : 2011 (6) Mh.L.J. 334.

4. Dnyandeo Vithal Salke and others vs. Dagdu Kadar Inamdar, 2017 (3) Mh.L.J. 314.

5. Chandrakant Kashinath Dike and others vs. Smt.Satyabhama Vishwanath Dike and another, Writ Petition No.8877/2013 (Aurangabad Bench) decided on 17.01.2014.

6. Dhondiba Bapu Zaware vs. Santosh Paraji Zaware and others, Writ Petition No.4756/2014 (Aurangabad Bench) decided on 08.12.2014.

4. In the instant case, the suit was registered on 16/09/2016 and Exhibit 7 was filed on 04/10/2016 which is in not less than one month from the institution of the suit. No doubt the suit is for removal of encroachment. Nevertheless, each litigant has to stand or fall on his own feet. Evidence will have to be led and pursuant to the conclusion of recording oral

evidence, any litigant could move an application seeking appointment of a court commissioner.

5. The Trial Court has rejected the application for the reason that it would amount to collection of evidence and the parties will have to independently prove their case while recording evidence.

6. In view of the above, this petition being devoid of merit is dismissed.

7. Nevertheless, it be noted that if, after the conclusion of the recording of oral evidence, any litigant moves an application for seeking appointment of a court commissioner, the Trial Court would consider the same on its own merits without being influenced by the observations in the impugned order dated 03/01/2017.

(RAVINDRA V. GHUGE, J.)

shp/-