

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

WRIT PETITION NO. 5493 OF 2017

SHIVAJI KUNDALIK GHULE AND OTHERS
VERSUS
MAHESH NAMDEO DOKE AND ANOTHER

...

Advocate for the Petitioners : Shri Choudhari Sushant B.
Advocate for Respondents 1 and 2 : Shri S.R.Shirsat h/f Shri Jadhavar
Santosh S..

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 18th June, 2018

Per Court:

1 I have heard the learned Advocates for the respective sides.

2 The Petitioners are the original Defendants in Regular Civil Suit No.982/2016. They moved an application (Exhibit 20) for appointment of an Advocate as a court commissioner for carrying out inspection of the suit property. The Trial Court has rejected the application by the impugned order dated 03.03.2017 concluding that the suit has been filed for seeking permanent injunction, the application Exhibit-5 seeking temporary injunction is pending and the recording of oral evidence has not commenced. It has also concluded that the measurement of disputed boundaries and marking of boundaries can be done by the Taluka Inspector of Land Records (TILR) and an Advocate ought not to be

appointed for the said purpose.

3 This Court has consistently held in a series of orders that the court commissioner ought not to be appointed before the recording of oral evidence. After such evidence is recorded, either of the litigating sides may move the Trial Court for seeking appointment of a court commissioner and such an application can be entertained on its own merits by the Trial Court and then the court commissioner could be appointed, if the Trial Court is convinced that his assistance is required for elucidating certain information.

4 In view of the above, the impugned order cannot be termed as being perverse or erroneous and this Writ Petition stands dismissed.

5 Needless to state, after the recording of evidence is over, either of the litigating sides would be at liberty to file an application seeking appointment of a court commissioner and in that situation, the Trial Court would consider the said application on its own merits.