

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9196 OF 2017

PARASRAM SUKA JADHAV
VERSUS
PRAKASH DATTARAM GEDAM AND ANOTHER

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Advocate for Petitioner : Shri Gangakhedkar Shailendra S.

Advocate for Respondents : Shri Rodge P.G.

h/f Shri Deshmukh Satish S For R/1

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CORAM : RAVINDRA V. GHUGE, J.

Dated: July 09, 2018

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PER COURT :-

1. The petitioner / plaintiff is aggrieved by the order dated 20.2.2017, passed by the trial Court in RCS No.15 of 2013, by which, the application Exhibit 36 seeking appointment of the Taluka Inspector of Land Records (TILR) as a Court Commissioner has been rejected.

2. I have considered the strenuous submissions of the learned Advocates for the respective sides.

3. This Court has consistently held that when it comes to appointment of a Court Commissioner, the trial Court should refrain from granting such an application until the recording of oral evidence is concluded. Any leave granted for appointment of Court Commissioner prior to the same would amount to collecting of evidence.

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4. Learned counsel for the plaintiff submits that as the issue with regard to encroachment has not been framed by the trial Court, a separate application has been filed and the same is pending adjudication. Therefore, the contention is that on the one hand, the trial Court has not framed an issue as regards the boundary dispute and the encroachment and on the other hand, has rejected Exhibit 26 purely on account of no issue being involved in the matter.

5. Considering the above, this petition is disposed off with the observation that the application for framing a proper issue shall be considered by the trial Court on its own merits. Thereafter, and after recording of the oral evidence, if any of the litigating sides seeks the appointment of a Court Commissioner, the trial Court would consider the same on its own merits.

(RAVINDRA V. GHUGE, J.)

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