

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

WRIT PETITION NO. 11863 OF 2018

**PURUSHOTTAM VILAS DAHALE
VERSUS
CHHABUBAI MOHAN DAKE**

...
Advocate for the Petitioner : Shri N. D. Batule h/f.
Shri S. V. Natu

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 23rd OCTOBER, 2018.

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PER COURT :

1. The petitioner/original plaintiff is aggrieved by the order dated 06/04/2018 passed by the Trial Court, by which, application Exhibit 176 seeking appointment of a court commissioner, which is filed jointly by the litigating sides, has been rejected in RCS No. 104/2006.

2. I have considered the strenuous submissions of Shri Natu, learned Advocate appearing on behalf of the petitioner.

3. I find from the record that RCS No. 104/2006 was remanded by the Appellate Court. A court commissioner was

appointed and he submitted his report and sketch map. Both the litigating sides do not agree with the report as the map does not indicate the existence of a well, which according to the litigating sides, undisputedly exists in the suit property.

4. The Trial Court has rejected application Exhibit 176 for the reason that after the court commissioner submitted his report and the map, none of the parties have examined the court commissioner. The learned Advocate for the petitioner relies upon the judgment delivered in the matter of *State Of U.P. vs Smt. Ram Sri And Anr. ,AIR 1976 Allahabad 121*, in which it is held that the court commissioner need not be examined to prove that he has authored the report.

5. It is settled law that when any of the parties do not agree with the report of a court commissioner and his sketch map, the parties have to lead evidence to convince the Trial Court that the said map is not reliable and would not assist the Court. The defects in the report and the map can be highlighted by recording of evidence.

6. The Trial Court has rightly concluded that unless the parties lead evidence and prove that the map and the report are not reliable, there cannot be a fresh appointment of a court commissioner.

7. Considering the above, I do not find that the impugned order could be termed as being perverse or erroneous. This petition, being devoid of merit is, therefore, dismissed.

8. Needless to state, after the litigating sides lead evidence and if the Trial Court is convinced that the report or the map is defective, unreliable and would not assist the Trial Court, then, on an application filed by any of the litigating sides seeking appointment of a court commissioner, after the recording of oral evidence, the Trial Court would consider the same on its own merits and in accordance with law.

(RAVINDRA V. GHUGE, J.)

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