

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

WRIT PETITION NO. 10514 OF 2018

TUKARAM NARAYAN GUDLE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for the Petitioner : Shri A.N.Sabnis h/f Shri Gunale V.D..
AGP for Respondent Nos.1 and 2 : Shri S.R.Yadav.
...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 19th September, 2018

Per Court:

1 The Petitioner is aggrieved by the order dated 23.04.2018 passed by the Trial Court rejecting the application Exhibit-60 filed by the Petitioner seeking appointment of a court commissioner in RCS No.502/2012.

2 The learned counsel for the Petitioner has strenuously criticized the impugned order. He submits that the Trial Court should have considered that the matter was remanded by the Appellate Court and it is to be decided afresh. If the court commissioner is appointed, he would render assistance to the court.

3 He further submits that the law is now settled that when it comes to carrying out a joint measurement of the suit properties of the

litigating sides and for fixing boundaries, the court commissioner can be appointed.

4 I find that the contention of the Petitioner to the extent of the facility of the appointment of a court commissioner for fixing boundaries after carrying out the joint measurement, is now a settled principle of law. However, this Court has consistently held in a series of orders, few of which are quoted below, that the court commissioner should not be appointed before the recording of oral evidence is concluded :-

- (a) *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.*
- (b) *Dnyandeo Vithal Salke and others vs. Dagdu Kadar Inamdar, 2017 (3) Mh.L.J. 314.*
- (c) *Chandrakant Kashinath Dike and others vs. Smt.Satyabhama Vishwanath Dike and another, Writ Petition No.8877/2013 (Aurangabad Bench) decided on 17.01.2014.*
- (d) *Dhondiba Bapu Zaware vs. Santosh Paraji Zaware and others, Writ Petition No.4756/2014 (Aurangabad Bench) decided on 08.12.2014.*

5 In view of the above, I do not find that the impugned order could be termed as being perverse or erroneous. This Writ Petition being devoid of merit is, therefore, dismissed.

6 However, it be noted that after the conclusion of the recording of oral evidence, if any of the litigating sides moves an application before the Trial Court seeking appointment of a court commissioner, the Trial Court would consider such an application on its own merits and without being influenced by the fact that the earlier application has been rejected by the impugned order.

kps

(RAVINDRA V. GHUGE, J.)