

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

WRIT PETITION NO. 9367 OF 2018

**GANESH PUNDLIK KOTGIRE
VERSUS
VALJANATABAI MADHAVRAO GHONSE AND ANOTHER**

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Advocate for the Petitioner : Shri M. D. Narwadkar

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 20th AUGUST, 2018.

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PER COURT :

1. The petitioner/plaintiff is aggrieved by the order dated 17/02/2018, by which, the Trial Court has rejected application Exhibit 21 seeking appointment of a Court Commissioner in RCS No. 419/2017.

2. I have heard the learned Advocate for the petitioner/plaintiff for quite some time. The suit was instituted by the petitioner on 20/07/2017 seeking declaration of ownership and perpetual injunction. The application Exhibit 21 was filed on 18/08/2017, in less than a month of the lodging of the suit, seeking appointment of a Court Commissioner. The Trial Court has rejected the application

vide the impugned order by assigning reasons.

3. In a series of orders/judgments of this Court, it has been consistently held that a Court Commissioner should not be appointed until the recording of oral evidence is over and the appointment of a Court Commissioner can be permitted when the Court Commissioner would assist the Trial Court. It is also settled that a Court Commissioner cannot be appointed for collecting evidence.

4. The learned Advocate for the petitioner has placed reliance upon the following judgments :-

(1) Ramzan Sheikh Chand Sheikh Vs. Panjab s/o Nathuji Gawande, 2014(6) Mh.L.J.,

(2) Kalyan Santram Kawade and others Vs. Khanderao alias Khandu Ganpati Kawade, 2015(4) Mh.L.J.,

(3) Fatima Gomes Furtado and others Vs. Indirabai Vinayak Lotlikar and others, 2016(2) Mh.L.J.

5. I find from the prayer put forth by the petitioner in Exhibit 21 that he has not only sought the measurement and

demarcation of the boundaries, but also desires that the Court Commissioner should report as to whether the defendants have made any construction in the suit plot, as to what extent has such construction been carried out and to what extent is the construction over the road adjoining the suit plot. In my view, the Trial Court has rightly rejected the said application as it practically amounts to collecting of evidence. So also, the said application could not have been entertained before recording of oral evidence.

6. Considering the above, this petition is dismissed.

7. Needless to state, in the event the petitioner or any litigating sides desires the appointment of a Court Commissioner after the conclusion of recording of oral evidence, such an application would be dealt with by the Trial Court on its own merits.

(RAVINDRA V. GHUGE, J.)

shp/-