

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

WRIT PETITION NO. 9780 OF 2018

KALUBAI SHIVAJI ADE
VERSUS
PRABHU SHAHU RATHOD AND ORS

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Advocate for the Petitioner : Dr.Tawshikar Swapnil D..
AGP for Respondent 3 : Shri S.R.Yadav.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 27th August, 2018

Per Court:

1 The Petitioner, original Plaintiff in RCS No.265/2015, is aggrieved by the impugned order dated 20.06.2018 passed by the Trial Court by which, the application Exhibit 56 seeking appointment of a court commissioner, has been rejected.

2 The learned Advocate for the Petitioner has vehemently canvassed the eleven grounds formulated in the memo of the petition. He has drawn my attention to the maps placed on record and the petition paper book.

3 The issue before the Trial Court is with regard to the allegation of encroachment by the Defendants. The relief of removal of encroachment and clearing off a public road, which is alleged to have

been encroached upon, is sought.

4 The Petitioner/ Plaintiff has concluded her evidence and has, thereafter, filed the application Exhibit 56 praying for measurement of a particular plot and for seeking a report from the Court Commissioner as to whether, there is any encroachment and to what extent such encroachment has occurred.

5 It is settled law that when it comes to the dispute of boundaries, the court commissioner can be appointed. It is equally settled in a series of judgments, some of which are mentioned herein below, that a court commissioner should not be appointed for collecting evidence and should normally be appointed after recording of oral evidence is concluded in the matter and the Trial Court is convinced that the court commissioner would assist in elucidating further information :-

- (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.*

6 Considering the above, I do not find that the impugned order could be termed as being perverse or erroneous. Any of the litigating sides can, after the recording of oral evidence is concluded in the matter, move an application for seeking appointment of a court commissioner and the Trial Court can consider as to whether, the picture is clear before it or the appointment of a court commissioner would assist it in elucidating further information, which would be useful in deciding the suit.

7 In view of the above, this Writ Petition being devoid of merit is, therefore, dismissed.