

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

WRIT PETITION NO.12111 OF 2018

Taibai Bhaurao Dhumal

Petitioner

VERSUS

Laxman Dadarao Vairat

Respondents

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Mr. S.S. Solanke, Advocate holding for Mr. V.H. Solanke, Advocate for the
petitioner

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CORAM : RAVINDRA V. GHUGE, J.

DATE : 29th OCTOBER, 2018

PER COURT :

1 The petitioner-original plaintiff is aggrieved by the impugned order dated 03.04.2018, by which the Trial Court has rejected her application Exh.25 seeking appointment of a Court Commissioner in R.C.S. No.113/2016.

2 I have considered the strenuous submissions of the learned Advocate for the petitioner and the grounds raised by him.

3 The suit has been filed on 27.06.2016. The written statement has been filed on 20.01.2017. Application Exh.25 seeking appointment of Court Commissioner has been filed on 25.04.2017. Neither issues are

framed, nor any evidence has been recorded.

4 This Court has consistently held that the Court Commissioner should be appointed after the conclusion of the recording of oral evidence. Following are some of the orders passed by this Court :

(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) Gangaram Baban Tagad and others Vs. Sarubai Yashwant Tagad and others (WP No.6700/2011 dated 12/06/2013).

(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.

(e) Dnyandeo Vithal Salke and others vs. Dagdu Kadar Inamdar, 2017 (3) Mh.L.J. 314.

(f) Shantabai Pralhad Anantwad Vs. Tahsildar, Tahsil Office Latur and others (WP No.1096/2018 dated 31/01/2018).

**(g) Baburao Jairam Borade vs. Fakira Tukaram
Lanekar, Writ Petition No.1743/2018 decided on
28.08.2018 (Aurangabad Bench).**

5 In view of above, it is obvious that Exh.25 pre-mature. Notwithstanding the legal position, the petitioner has prayed in Exh.25 that the T.I.L.R. should visit the disputed Gat No.278 and should inspect 39 R and find out as to which litigating side has how much portion of the said land. This is apparently aimed at collecting evidence. The parties who aver, will have to prove their averments. It is not the duty of the Court Commissioner to find out which litigating side is in possession of how much portion of the suit land. Even on these grounds, the trial Court has rightly rejected the application by the impugned order.

6 In view of the above, this petition is dismissed.

7 Never the less, it be noted that in the event either of the litigating sides makes an application for seeking appointment of the Court Commissioner, after the recording of oral evidence has concluded, the trial Court would consider the same on its own merits.

[RAVINDRA V. GHUGE, J.]

Donge/-