

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

WRIT PETITION NO. 9853 OF 2018

**GANGADHAR BABURAO GURAV AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

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Advocate for the Petitioners : Shri M. S. Kulkarni
AGP for Respondent Nos. 1 and 2 : Shri S.R.Yadav-Lonikar

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 29th AUGUST, 2018.

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PER COURT :

1. The petitioners, who are original plaintiffs in Regular Civil Suit No. 30/2017, are aggrieved by the order dated 06/04/2018, by which, application Exhibit 22 filed by them seeking appointment of a Court Commissioner, has been rejected.

2. I have considered the strenuous submissions of the learned Advocate for the plaintiffs and have gone through the seven grounds formulated by him in the memo of the petition.

3. The plaintiffs have filed their suit on 11/04/2017

seeking mandatory injunction. The written statement was filed by the respondents thereafter. On 15/11/2017, the plaintiffs filed application Exhibit 32, seeking appointment of a Court Commissioner to inspect the road and the suit property and thereafter, submit his report with regard to the position in which the house of the defendant Sow. Rajasbai is situated, the area in which the said house is actually located, measure the length and the breadth of the house and then submit his report alongwith a map.

4. The trial Court has rejected the said application on the ground that it would amount to collecting of evidence.

5. This Court has consistently taken a view that a Court Commissioner should be appointed after the recording of oral evidence is concluded if the trial Court may require the assistance of a Court Commissioner for elucidating further information. If the trial Court is convinced that the material available on record is enough for deciding the suit, it may as well, refuse the appointment of Court Commissioner. Some of the orders holding the abovesaid view passed by this Court are

mentioned as under :-

- (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 find that the Application Exhibit 22, which has been rejected for the reasons recorded by the trial Court, was filed at a pre-mature. Hence, this petition is dismissed for being devoid of merit.

7. It is, however, made clear that if, after the recording of oral evidence, either of the litigating sides move an application

for appointment of Court Commissioner, the trial Court would consider the said application on its own merits, without being influenced by the impugned order dated 06/04/2018.

(RAVINDRA V. GHUGE, J.)

shp/-