

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11799 OF 2017

DIGAMBAR RAMBHAU KALE
VERSUS
LOCHANABAI W/O. DIGAMBAR SAKHARE AND OTHERS

Advocate for Petitioner : Mr. Balaji Shinde
h/f. Mr. V.P. Latange.
Advocate for Respondent Nos. 1 to 5 : Mr. V.C. Patil
h/f. Mr. U.B. Bondar.

CORAM : RAVINDRA V. GHUGE, J.
Dated : 20th June, 2018

Per Court :

1. The Petitioner/Original Plaintiff is aggrieved by the impugned order dated 05/06/2017, passed by the Trial Court in R.C.S. No. 21/2015, by which, Application Exhibit 39 filed by the Petitioner/Plaintiff seeking appointment of a Court Commissioner has been rejected.

2. Learned counsel for the Petitioner has strenuously criticized the impugned order. He has drawn my attention to the six grounds formulated by him in the memo of the Petition. He submits that the law has crystallized that a Court Commissioner can be appointed if the boundaries are disputed.

3. Learned advocate for the Respondents/Original

Defendants submits that the suit is at the stage of framing of issues. Recording of evidence is not commenced pursuant to the issues having been cast. The effort of the Plaintiff vide Application Exhibit 39 is to collect evidence.

4. It requires no debate that this Court had consistently passed series of orders concluding that a Court commissioner should not be appointed before the recording of oral evidence. The scheme under Section 75 read with Order XXVI Rule 9 of Civil Procedure Code is for the purposes of appointing a Court Commissioner, by which the Court can elucidate further information which it feels necessary before deciding the suit.

5. Considering the above, I do not find that the Trial Court has committed any error in rejecting Application Exhibit 39. This Petition being devoid of merit, is therefore, dismissed. Needless to state, after the recording of oral evidence, if either of the litigating sides moves an Application for appointment of a Court Commissioner, the Trial Court will consider the same on its own merits without being influenced by the order below of Exhibit 39.

(RAVINDRA V. GHUGE, J.)