

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

907 WRIT PETITION NO. 10498 OF 2018

SANJAY RUKMANRAO MUKKAWAR
VERSUS
SAYYD HANIFABEE SAYYAD SHADUL

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Advocate for Petitioner : Shri Uttarwar Pavan P.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: October 20, 2018

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PER COURT :-

1. The petitioner is aggrieved by the order dated 8.6.2018, passed by the trial Court, by which, application Exhibit 44 seeking appointment of a Court Commissioner in RCS No.38 of 2015, has been rejected.

2. I have heard the learned counsel for the petitioner.

3. I find that the trial Court has rejected Exhibit 44 for the reason that the trial Court can consider the record available and pass necessary orders in the suit which is preferred for seeking perpetual injunction. The application is also rejected for the reason that the said application amounts to collection of evidence since the petitioner has prayed for causing an enquiry as to which plot belongs to the individual litigating sides, what is the situation of the plot and which are the boundaries of the plot.

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4. I find that the recording of the oral evidence in the pending suit has not concluded. This Court has consistently held that a Court Commissioner should not be appointed until the recording of the evidence is concluded in the following matters:-

(1) Syed Mushtaque Ahmad Syed Ismail and others Vs. Syed Ashique Ali Khan Hatdar [2011 (6) Mh.L.J. 334 = 212 (2) Bom. C.R. 790], and

(2) Nalubai Shinde and others Vs. Gopinath Shinde [2011(2) Mh.L.J.991].

5. In view of the above, I do not find that the impugned order could be termed as perverse or erroneous. This petition being devoid of merits is, therefore, dismissed. It is, however, made clear that after the recording of the oral evidence, in the event any litigating sides seeks appointment of the Court Commissioner, the trial Court would consider the same on its own merits.

(RAVINDRA V. GHUGE, J.)

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