

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

WRIT PETITION NO. 11437 OF 2018

**SHIVANAND NARSING MORKHANDE
VERSUS
THE DISTRICT COLLECTOR LATUR AND OTHERS**

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Advocate for the Petitioners : Ms. Sunita Sonwane
Shri B. R. Kedar
AGP for the respondent/State :- Shri S. R. Yadav.

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 16th OCTOBER, 2018.

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PER COURT :

1. The petitioner/original plaintiff is aggrieved by the order 03/01/2018 passed by the Trial Court, by which, application Exhibit 59 filed by the plaintiff in RCS No. 225/2017, praying for appointment of a court commissioner, has been rejected.

2. I have considered the strenuous submissions of Shri Kedar learned Advocate for the petitioner.

3. I find from the record that the suit was instituted on 17/06/2017. Application Exhibit 59 seeking appointment of a court commissioner was filed on 15/12/2017 seeking

measurement of the suit property and for identifying the encroachment on the road.

4. This court has consistently taken a view that a court commissioner is not to be appointed for collecting evidence and the appointment of a court commissioner should not be permitted until the recording of oral evidence is completed.

Some of the orders/judgments of this Court are as under :-

1. **Gangaram Baban Tagad and others Vs. Sarubai Yashwant Tagad and others (WP No.6700/2011 dated 12/06/2013)**
2. **Shantabai Pralhad Anantwad Vs. Tahsildar, Tahsil Office Latur and others (WP No.1096/2018 dated 31/01/2018)**
3. **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.**
4. **Dnyandeo Vithal Salke and others vs. Dagdu Kadar Inamdar, 2017 (3) Mh.L.J. 314.**
5. **Chandrakant Kashinath Dike and others vs. Smt.Satyabhama Vishwanath Dike and another, Writ Petition No.8877/2013 (Aurangabad Bench) decided on 17.01.2014.**
6. ***Dhondiba Bapu Zaware vs. Santosh Paraji Zaware and others, Writ Petition No.4756/2014 (Aurangabad***

Bench) decided on 08.12.2014.

5. In view of the above, I do not find that the impugned order dated 03/01/2018 could be termed as being perverse or erroneous. This petition, being devoid of merit is, therefore, dismissed.

6. In the event, either of the litigating sides move an application for appointment of a court commissioner, after the recording of oral evidence is concluded, the Trial Court would consider such an application on its own merits.

(RAVINDRA V. GHUGE, J.)

shp/-