

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

WRIT PETITION NO. 11016 OF 2018

JAIWANT SHRIRANG BHOSALE
VERSUS
KISAN PANDURANG BHOSALE AND OTHERS

...
Advocate for the Petitioner : Shri Kolpe Mahendra B.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 03rd October, 2018

Per Court:

1 The Petitioner/ original Plaintiff is aggrieved by the impugned order dated 07.04.2018 passed by the Trial Court by which, the application Exhibit 27 filed by him in RCS No.501/2015 seeking appointment of a court commissioner, has been rejected.

2 I have heard the strenuous submissions of the learned Advocate for the Petitioner and have gone through the petition paper book with his assistance.

3 The Trial Court has rejected the application Exhibit 27 on two grounds. Firstly that, the same suit property was earlier measured in RCS No.51/2004, which was filed by this Plaintiff and which was eventually dismissed on 09.02.2010. The decree in the said suit has not been challenged. Secondly, the Plaintiff himself has got the suit property

measured through the Taluka Inspector of Land Records (TILR) and he has produced the map and the report on record. As such, the suit property was measured on two occasions. These documents are before the Trial Court.

4 It is conceded that the recording of oral evidence in the pending suit has not been concluded.

5 This Court has consistently held that a court commissioner is not to be appointed for collecting evidence and his appointment can be sought after the recording of oral and documentary 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).

6 Insofar as the dissatisfaction of the litigant with regard to the Court Commissioner's measurement/ report/ map is concerned, the law is settled that the aggrieved litigant has to lead evidence, examine the court commissioner as well and bring such evidence before the Court, which would indicate that the report/ measurement/ map of the Court Commissioner is not reliable and dependable and needs to be discarded. If the Court is convinced that such report/ measurement/ map deserves to be discarded, it may then consider granting the appointment of a court commissioner and that too after the recording of oral evidence.

7 In view of the above, I do not find that the impugned order could be branded as being perverse or erroneous. This Writ Petition is, therefore, dismissed.

8 Needless to state, if any of the litigating sides, after conclusion of the recording of oral evidence, convinces the court that earlier two measurements and reports deserve to be discarded for being

unreliable and then files an application for appointment of a court commissioner, the Trial Court would consider the same on it's own merits.

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(RAVINDRA V. GHUGE, J.)