

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

WRIT PETITION NO. 11951 OF 2018

**MANOHAR BALASAHEB POKHARKAR
VERSUS
TATYABA KASHINATH POKHARKAR AND OTHERS**

...
Advocate for the Petitioner : Shri P. V. Barde

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 25th OCTOBER, 2018.

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PER COURT :

1. The petitioner/original plaintiff is aggrieved by the impugned order dated 16/07/2018, by which, the Trial Court has rejected application Exhibit 22 filed by the plaintiff seeking appointment of a court commissioner under Order 26 Rule 9 of the Code of Civil Procedure in RCS No. 79/2016.

2. I have heard the learned Advocate for the petitioner for quite some time.

3. The Trial Court has rejected Exhibit 22 for the reason that the plaintiff prayed for the measurement of his own property. When the boundaries are disputed, the properties of

the litigating sides should be jointly measured.

4. Notwithstanding the above, a court commissioner can normally to be appointed after the completion of the recording of oral evidence, is the law consistently laid down by this Court in the following matters :-

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, the impugned order cannot be faulted and this petition is, therefore, dismissed.

6. It is, however, be noted that after the recording of oral evidence of the litigating sides, if either of the parties move an application for seeking appointment of a court commissioner, the Trial Court would consider the said application. If a joint measurement is sought the said application be decided by the Court on its own merits and without being influenced by its observations set out in the impugned order.

(RAVINDRA V. GHUGE, J.)

shp/-