

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

WRIT PETITION NO. 10180 OF 2018

Changdeo Nathu Katore and other s .. Petitioners

Versus

Trimbak Kisan Kathore and others .. Respondents

Shri Sanket S. Kulkarni, Advocate for the Petitioner.

CORAM : S. V. GANGAPURWALA, J.

DATE : 21TH SEPTEMBER, 2018.

FINAL ORDER :

. The petitioners are original defendants. The respondent Nos. 1 to 3/plaintiffs had filed suit for measurement and for fixation of boundaries. During the pendency of suit plaintiffs filed an application for appointment of T.I.L.R. as Court Commissioner. The Trial Court allowed the application. Aggrieved thereby, the defendants have filed present petition.

2. Mr. Kulkarni, the learned counsel for petitioners submits that, the parties have not yet adduced their evidence. It is too premature at this stage to direct appointment of Court Commissioner. The learned counsel further submits that, the plaintiffs in the plaint itself states that, the plaintiffs are not aware of the encroachment and this shows that the application is

given to collect the evidence. According to the learned counsel, the *modus operandi* of the plaintiffs in filing the application is that after getting the report to amend the plaint. The appointment of Court Commissioner cannot be made for such purpose, more particularly at the premature stage.

3. Normally appointment of the Court Commissioner is after the parties adduce their evidence.

4. Considering the nature of the suit, the Court has appointed the Court Commissioner. It is not that after the report of Court Commissioner is received the plaintiff gets an indefeasible right to amend the plaint. The application for amendment of the plaint has to be considered considering all the pros and cons and defence of the defendants also.

5. The suit itself being for fixation of boundaries and measurement, the Court Commissioner has been appointed. It is also trite that mere placing the measurement map on record would not make the measurement map admissible. Same has to be proved by the party relying upon the same in a proper manner. The defendant will have opportunity to controvert the measurement if the same is against him. However, today, it would be too early to predict the report that would be submitted by the T. I. L. R. The Court has exercised its discretion. The

order is interlocutory one. The appointment of Court Commissioner would not affect the final judgment of the Court. Considering all the aforesaid aspects of the matter, I am not inclined to exercise the writ jurisdiction. The writ petition accordingly is dismissed. No costs.

[S. V. GANGAPURWALA, J.]

bsb / Sept. 18

Bhalchandra
Sudhakar
Bodke

Digitally
signed by
Bhalchandra
Sudhakar
Bodke
Date:
2018.09.26
10:13:43
+0530