

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

WRIT PETITION NO. 10996 OF 2018

**LALITA RAVI JADHAV
VERSUS
SARJERAO GANGADHAR BORADE AND OTHERS**

...
Advocate for the Petitioner : Shri B. L. Sagar Killarikar h/f.
Shri M. B. Sandanshiv
AGP for Respondent Nos.2 and 3 : Shri S. R. Yadav-Lonikar
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CORAM : RAVINDRA V. GHUGE, J.

DATED : 03rd OCTOBER, 2018.

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PER COURT :

1. The petitioner/plaintiff is aggrieved by the order dated 22/06/2018, by which, the learned Trial Court has refused the appointment of a TILR, for the second time, as a court commissioner for re-measurement of the land.

2. Contention is that earlier the Trial Court had passed an order on 21/04/2016 in RCS No. 67/2015 and had appointed a court commissioner. The cadastral surveyor of Land Records, Mantha, was issued with certain directions and a part of the directions at Clause 3 was not fully complied with and hence application Exhibit Nos. 47 and 52 was filed for re-

appointment of a court commissioner.

3. I have considered the strenuous submissions of the learned Advocate for the petitioner and the learned AGP on behalf of respondent Nos. 2 and 3.

4. This Court has consistently taken a view that a court commissioner should not be appointed for collecting evidence and no appointment of a court commissioner should be made until the recording of oral evidence is concluded. Following are some of the orders which this Court has passed :-

(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) *Dnyandeo Vithal Salke & others vs. Dagdu Kadar Inamdar, 2017(3) Mh.L.J. 314.*

(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.

5. In the above backdrop, the request for appointment of a court commissioner in the present suit cannot be entertained.

6. Further grievance voiced by the petitioner is that the court commissioner appointed earlier has not fully complied with the directions of the Trial Court issued in the order dated 21/04/2016. It is settled law that if the parties are aggrieved by the report of the court commissioner for any reason whatsoever, the parties have to lead evidence, examine and cross-examine the court commissioner and prove to the Trial Court that the report submitted by the court commissioner is not reliable and is not dependable. This exercise is yet to be completed by these litigating sides.

7. In view of the above, this petition is dismissed. In the event, any litigating side establishes before the Trial Court that the report of the court commissioner pursuant to the order dated 21/04/2016, is not reliable and deserves to be discarded

and then, if either of them files an application for appointment of a court commissioner, the same shall be considered by the Trial Court on its own merits.

(RAVINDRA V. GHUGE, J.)

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