

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

WRIT PETITION NO. 4488 OF 2015

**KUSUM LIMBAJI THORAT THROUGH GPA GANPAT LIMBAJI THORAT
VERSUS
RANGNATH BABU KAMBALE AND OTHERS**

**WITH
CIVIL APPLICATION NO.4318 OF 2017
IN
WRIT PETITION NO.4488 OF 2015**

**RANGNATH BABU KAMBALE AND OTHERS
VERSUS
KUSUM LIMBAJI THORAT THROUGH GPA GANPAT LIMBAJI THORAT**

**WITH
WRIT PETITION NO. 4490 OF 2015**

**MAHENDRA APPASAHEB THORAT
VERSUS
RANGNATH BABU KAMBALE AND OTHERS**

**WITH
CIVIL APPLICATION NO.4319 OF 2017
IN
WRIT PETITION NO.4490 OF 2015**

**RANGNATH BABU KAMBALE AND OTHERS
VERSUS
MAHENDRA APPASAHEB THORAT**

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Advocate for the Petitioners : Shri Gaware Niteen V. a/w Shri S.P.Salgar.
Advocate for Respondents 1 to 4 : Shri A.M.Gholap.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 18th June, 2018

Per Court:

1 I have heard the learned Advocates for the respective sides.

2 The issue in both these petitions is as to whether, the Trial Court can appoint a court commissioner even before the pleadings are complete and before the recording of oral evidence, when the applications for temporary injunction are decided.

3 In the instant case, the Trial Court has already granted the applications (both Exhibit 46) filed by the Petitioners/ Plaintiffs in their respective suits seeking appointment of a court commissioner. The Court Commissioner implemented the directions of the Trial Court and submitted it's reports along with the maps. The Plaintiffs do not find the reports to be appropriate and therefore, dispute the said reports contending that the reports are not reliable and do not reflect the true picture.

4 On these premises, the applications Exhibit 73 in RCS No.80/2009 and Exhibit 74 in RCS No.81/2009 were filed by these Petitioners/ Plaintiffs. The Trial Court has rejected the said applications on the ground that if the Plaintiffs do not agree with the report of the Court Commissioner, there is a procedure to follow and seeking appointment of the second Court Commissioner would amount to collecting evidence.

5 It is settled law that if any litigant disagrees with the report of

the Court Commissioner and the map placed on record, the said litigant has a right to examine the Court Commissioner and on the basis of evidence, has to convince the Trial Court that the report is not reliable, the map cannot be considered as being a reflection of the true picture and after recording of evidence and proving this aspect, the concerned litigant may opt for seeking appointment of a court commissioner.

6 Considering the above, I do not find that the impugned orders dated 13.02.2015 rejecting Exhibits 73 and 74, could be termed as being perverse or erroneous. It goes without saying that if the Plaintiffs are aggrieved by the report of the Court Commissioner and the map placed on record, they would be at liberty to lead oral evidence in both the suits and after the recording of oral evidence is over, can move an application praying for appointment of a new court commissioner by convincing the Trial Court that the earlier report and the map tendered by the Court Commissioner are not dependable/ reliable.

7 In the light of the above, both the Writ Petitions are dismissed.

8 The pending Civil Applications do not survive and stand disposed of.