

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

WRIT PETITION NO. 10866 OF 2018

KERUNATH JAYWANT AHER AND OTHERS THROUGH GPA KIRAN
KERNUANATH AHER
VERSUS
SANJAY SOPAN AHER

...

Advocate for the Petitioners : Shri Gandhi Amol S..

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 28th September, 2018

Per Court:

1 The Petitioners, who are the original Plaintiffs in RCS No.286/2014, are aggrieved by the order dated 06.08.2018 by which, the Trial Court has rejected the application Exhibit-32 and declined to issue the second appointment order of a court commissioner.

2 The learned Advocate for the Petitioners has strenuously canvassed twelve grounds formulated by him in the memo of the petition. I am, however, unable to be impressed by the said grounds for the reason that in the pending suit, the recording of evidence is yet to commence. So also, the Trial court had once appointed the court commissioner, whose report is on record at Exhibit 22 dated 20.04.2014.

3 The law is settled that when the report of a court

commissioner is not acceptable to the litigant, such litigant has to take steps for proving that the said report is unreliable and not dependable. So also, this Court has consistently held that the court commissioner should not be appointed before the recording of oral and documentary evidence is concluded. Some orders passed by this Court laying down the said law are as under :-

- (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 and 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.*

4 In view of the above, the impugned order does not deserve to be branded as being perverse or erroneous. This Writ Petition being

devoid of merit is, therefore, dismissed.

5 Needless to state, after the recording of oral evidence is concluded, if any of the litigating sides moves an application seeking appointment of a court commissioner, the same would be considered by the Trial Court on its own merits.

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(RAVINDRA V. GHUGE, J.)