

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.11601 OF 2018
(Ramesh Haribhau Gadade Vs. Chatrugun s/o Nagnath Nimbalkar
and others)

Mr.A.V.Patil-Indrale, Advocate for the petitioner.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 17/10/2018

PER COURT :

1. The petitioner is aggrieved by the order dated 06/12/2017 passed by the Trial Court by which appointment of a Court Commissioner for the second time, has been refused and application Exh.46 filed by the petitioner/defendant has been rejected.

2. Grievance is that as a Court Commissioner was earlier appointed for measurement of the land of the plaintiff, said measurement has been carried out and the report of the Court Commissioner is before the Trial Court.

3. It requires no debate and the learned Advocate for the petitioner would be right in submitting that it is always beneficial to have a joint measurement of the properties of the litigating sides when an issue of disputed boundaries is before the Court.

4. It is equally settled that if any party is aggrieved by the report of a Court Commissioner, it can examine the Court Commissioner and on the basis of the evidence recorded, it can be established before the Trial Court that the report is either defective or unreliable. Thereafter, the application for appointment of a Court Commissioner for the second time could be entertained.

5. This Court has consistently held that a Court Commissioner should not be appointed before the conclusion of the recording of oral evidence in the suit. Some of the orders/judgments passed by this Court are as under :-

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.*

6. In view of the above and considering the consistent view taken by this Court, if either of the litigating sides seek an appointment of a Court Commissioner after the recording of a oral evidence, the Trial Court would consider the same on its own merits and without being influenced by its earlier orders.

7. In view of the above, this petition is disposed of.

(Ravindra V.Ghuge, J.)