

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.11698 OF 2018
(Iqbal Baig s/o Afzal Baig Vs. Datta Bhujanga Jadhav and others)

Mr.H.I.Pathan, Advocate for the petitioner.

(CORAM : Ravindra V.Ghuge, J.)
DATE : 22/10/2018

PER COURT :

1. Learned Advocate fore the petitioner has strenuously criticized the impugned order dated 27/07/2018 by which the Trial Court has rejected application Exh.34 and has refused permission for appointment of the TILR as a Court Commissioner. Learned Advocate has also drawn my attention to the 6 grounds formulated in the memo of the petition and submits that the impugned order is perverse and erroneous.

2. I find that the learned Advocate for the petitioner would be right in submitting that when a dispute as regards the boundaries of the suit properties appears from the rival pleadings, that a Court Commissioner should be appointed.

3. However, this Court has consistently held that a Court Commissioner is not meant for collecting evidence and the Court Commissioner could be appointed by the Trial Court after the

recording of oral evidence is concluded, if the Trial Court finds it appropriate. Some of the orders/judgments passed by this Court 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 and since the recording of oral evidence in RCS No.37/2016 has not been concluded, I do not find that the impugned order could be termed as being perverse or erroneous. This petition, being devoid of merit, is therefore dismissed.

5. It, however, be noted that after the recording of oral evidence is concluded, if any of the litigating sides moves an application for appointment of a Court Commissioner, the same would be considered on its own merits.

(Ravindra V.Ghuge, J.)