

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

WRIT PETITION NO. 12334 OF 2018

RAJKUMAR SHANKARRAO MORE
VERSUS
PRAKASH GANGARAM PATIL AND OTHERS

...
Advocate for the Petitioner : Shri Vibhute Vinod M..

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 01st November, 2018

Per Court:

1 The Petitioner is aggrieved by the order dated 28.09.2018 passed by the Trial Court by which, the application Exhibit 108 in RCS No.159/2011, has been allowed and the Deputy Superintendent of Land Records is appointed as a court commissioner for measuring the land Survey No.30 admeasuring 10 H 98 R and for submission of the measurement report.

2 The learned Advocate for the Petitioner/ Defendant No.5 makes a serious grievance that the impugned order amounts to collecting of evidence. It is submitted that the recording of oral evidence is concluded. This application is made thereafter and the Trial Court should not have entertained the said application. Reliance is placed on the following judgments :-

(a) *Dnyandeo Vithal Salke and others vs. Dagdu*

Kadarinamdar, 2017 (3) Mh.L.J. 314.

(b) *Dhondiram Nivrutti Pawar vs. Laxman Khashaba Pawar, (2018) 2 Mh.L.J.255.*

(c) *Puttappa vs. Ramappa, AIR 1996 Karnataka 257.*

3 The contention of the Petitioner that a court commissioner should not be appointed for collecting evidence, is perfectly sound and is in tune with the settled law. The judgments relied upon indicate that collecting of evidence is to be prohibited by the appointment of a court commissioner.

4 I have perused the impugned order in which, the Trial Court has specifically observed in paragraph 4 that it would not allow collecting of evidence and has merely directed the Deputy Superintendent of Land Records to measure the land Survey No.30 admeasuring 10 H 98 R and submit the measurement report.

5 I do not find that the said order could be termed as permitting the court commissioner to collect the evidence.

6 This Writ Petition, being devoid of merit is, therefore, dismissed.