

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

946. WRIT PETITION No. 12622 of 2018

Daulat S/o Kisan Jadhav

... Petitioner

Versus

The State of Maharashtra and others

... Respondents

Mr. Z.M. Pathan, Advocate for petitioner.

Coram : N.M. Jamdar, J.

Date : 21 November 2018.

ORAL ORDER:

1. Heard the learned Counsel for the petitioner.
2. By this petition, petitioner/plaintiff has challenged the order passed by the learned Civil Judge (Senior Division), Newasa District Ahmednagar, dated 17 October 2018 appointing the Court Commissioner. The petitioner has challenged this order on two grounds; firstly, twice the spot inspection has been done by the Revenue Authority and secondly, the respondents/defendants are trying to collect evidence. As far as the first ground is concerned, the spot inspection, which was done by the Revenue Authority, is subject matter of challenge in the suit. This is not done by a Commissioner

appointed by the Court. The Civil Court, considering the circumstances and the fact that it is necessary to carry out the spot inspection by the Court Commissioner for proper adjudication of the suit, has passed impugned order. The learned Civil Judge is well within his power to exercise the discretion to appoint the Court Commissioner. It is held in various decisions by this Court that in the boundary disputes, existence of road and such other adjudication, which requires spot inspection, it is open to the Civil Judge to appoint the Commissioner. Some times such inspections are deserving. Merely because another view is possible to hold that Commissioner ought not to have been appointed, is not a ground to exercise the power under Article 227 of the Constitution of India.

3. The writ petition is accordingly rejected.

N.M. Jamdar, J.