

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

WRIT PETITION NO. 12912 OF 2018

Rameshwar s/o Shivlingappa Gulve ... Petitioner

Versus

Vilas s/o Baburao Gaibi
& others ... Respondents

Mr. Pradeep Deshmukh, Advocate holding for Mr. A.D. Kawre,
Advocate for the Petitioner.

Coram : N.M. Jamdar, J.

Date : 12 December 2018

Oral Order :

1. By this petition, the petitioner has challenged the appointment of the Taluka Inspector Land Records as a Court Commissioner to carry out a local investigation.

2. The appointment of a Court Commissioner is discretionary. Generally in the matters of boundary disputes, removal of encroachment etc., courts appoint Survey Officers as Court Commissioner. In the present suit, the plaintiffs have sought removal of encroachment.

3. Learned counsel for the petitioner relying on the decision in the case of *Dnyandeo Vithal Salke and others vs. Dagdu Kadar Inamdar*¹ and *Syed. Mushtaque Ahmed s/o Syed. Ismail and others Vs. Syed Ashique Ali Khan s/o Haidar Ali*² submits that the discretion in this case ought not to have been exercised.

4. In the case of *Dnyandeo Vithal Salke and others Vs. Dagdu Kadar Inamdar*, that suit was filed for injunction simplicitor and there was no prayer for removal of encroachment. In the decision of *Syed. Mushtaque Ahmed s/o Syed. Ismail and others Vs. Syed Ashique Ali Khan s/o Haidar Ali* the learned Single Judge noted that the suit in question did not contain any boundary dispute or any dispute regarding encroachment. Both the judgments arise from entirely different set of facts. The petitioner has overlooked the decisions which have taken a view that in case of boundary dispute, appointment of a Survey Officer is desirable.

4. Writ petition is rejected.

N.M. Jamdar, J.

¹ 2017(3) Mh.L.J. 314

² 2012(1) ALL MR 80