

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

WRIT PETITION NO. 4 OF 2018

KISAN RAMBHAU RANKHAMB
VERSUS
SNEHA NANIK JODHWANI THROUGH HER POWER OF ATTORNEY
NANIK DAYALDAS JODHWANI

...
Advocate for the Petitioner : Shri Patil G.N..
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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 05th February, 2018

Per Court:

1 The Petitioner/ Defendant is aggrieved by the order dated 27.09.2017 by which, the Trial Court has allowed the application Exhibit-41 under Order 26 Rule 9 of the Code of Civil Procedure filed by the Plaintiff in RCS No.548/2015 seeking the appointment of a Court Commissioner.

2 The grievance of the Petitioner is that the application Exhibit-5 filed by the Plaintiff has been rejected on 18.04.2016. Once the said application is rejected, it means that there is no boundary dispute and there is no reason to appoint a Court Commissioner. Reliance is placed on the judgments of this Court in the matters of Sanjay Namdeo Khandare vs. Sahebrao Kachru Khandare and others, 2001 (2) Mh.L.J. 959, Maria

Pereira and others vs. Dolorosa Christina Rodrigues, 2015 (5) Mh.L.J. 577.
and Dnyandeo Vithal Salke vs. Dagdu Kadar Inamdar, 2017 (3) Mh.L.J.
314.

3 It is further canvassed that some map is already placed on record. The Trial Court can rely on the said map. Once this is the position and when there is no boundary dispute, there is no reason to appoint a Court Commissioner. Further grievance is that the Deputy Superintendent of Land Records is appointed as the Court Commissioner and instead of the said authority, the Taluka Inspector of Land Records (TILR) could be appointed.

4 It is informed that the recording of evidence in the pending suit has commenced. More than two witnesses have already been examined.

5 It appears from the record that the contention of the Plaintiff is that the common bandh (boundary) has been destroyed by the Defendant in between Gat No.154 and Gat No.156. The dispute is with regard to the common bandh and it is contended by the Plaintiff that the Defendant has crossed over from the common bandh and has encroached up to about 9 R into the land owned and possessed by the Plaintiff.

6 It is settled law that when there is a boundary dispute, a joint measurement of the suit property as well as adjacent property of the Defendant is always practicable and would assist the Court in proper

adjudication on an issue of encroachment. It is also well settled that the Court Commissioner is normally appointed when the Court has not earlier appointed a Court Commissioner and when the recording of evidence has already commenced and the Trial Court forms a view that the appointment of a Court Commissioner would assist it in properly adjudicating upon the suit. This is also the view taken by this Court in the judgments cited by the Petitioner. It is equally settled that the Court Commissioner cannot be appointed for collecting evidence.

7 The rejection of the application Exhibit-5 would not close the right of any of the litigating sides in seeking the appointment of a Court Commissioner, after the recording of oral evidence has commenced. Merely because Exhibit-5 has been rejected, would not mean that the Plaintiff has virtually lost his battle. While dealing with the case finally and after recording of evidence has already commenced, the Trial Court finds it appropriate to rely upon the report of the Court Commissioner rather than the rough sketch map which is placed on record.

8 Considering the above, I do not find that the impugned order could be termed as being perverse or erroneous. This Writ Petition being devoid of merit is, therefore, dismissed.