

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

909 WRIT PETITION NO. 3876 OF 2018

WAMAN GANGARAM SARVADE

VERSUS

SURESH BABURAO GIRI & ORS.

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Mr. M.U.Shelke, Advocate for Petitioner.

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CORAM : V.L.ACHLIYA, J.

DATE : 18th APRIL, 2018

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ORAL ORDER :

1. By this petition preferred under Article 227 of Constitution of India, the petitioner has challenged the order dated 10/10/2017 passed by the Joint Civil Judge [Jr.Division], Kaij, District Beed. By the impugned order, trial Court has rejected the application moved under Order XXVI Rule 9 of Code of Civil Procedure seeking appointment of senior practicing Advocate as Court Commissioner to visit the suit site and submit the report as to the possession and ownership of land bearing G.No. 60/B/2 i.e. disputed land.

2. Trial Court has rejected the application by observing that the burden to prove the possession and ownership of suit land is on the plaintiffs. The reason assigned seeking

appointment of Court Commissioner is that the defendant will not allow them to get the witnesses, is based on assumptions and can not be a ground to appoint Court Commissioner. It is further observed that Court Commissioner can not be appointed to collect the evidence. In my view, the order passed is perfectly legal and within four corners of law. There is absolutely no perversity in the order passed. In absence of perversity, arbitrariness or jurisdictional error, the impugned order calls for no interference in exercise of writ jurisdiction. I am, therefore, not inclined to entertain the petition.

3. Writ Petition stands dismissed.

[V.L.ACHLIYA, J.]

KNP/W.P. 3876.2018