

IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD

WRIT PETITION NO.451 OF 2018  
(Radhesham Shriramji Attal Vs. Prabhakar Kishanrao Pisal and others)

Mr.L.D.Vakil, Advocate for the petitioner.

( CORAM : RAVINDRA V. GHUGE, J.)

DATE : 18/01/2018

PER COURT :

1. The petitioner is aggrieved by the order dated 21/09/2017 by which application Exh.42 filed by the petitioner/plaintiff seeking appointment of a Court Commissioner, has been rejected.
2. The learned Advocate for the petitioner has strenuously criticized the impugned order. He has drawn my attention to the 10 grounds formulated in the memo of the petition and with his assistance, I have gone through the petition paper book.
3. It is informed that the Trial Court has yet not commenced the recording of evidence. Application Exh.42 for seeking appointment of a Court Commissioner was filed even before the issues were cast.
4. This Court has consistently concluded that an application for

appointment of a Court Commissioner should not be allowed before the commencement of the recording of oral evidence. It is only in rare situations that such an application can be entertained.

5. The petitioner claims to have purchased the suit property in an auction from respondent No.3/Municipal Council. Despite the same, respondent No.2 APMC claims to be the owner of the property. It is in this backdrop that Exhibit 42 was filed for measurement of the boundaries.

6. Considering the above, I do not find that this petition needs to be entertained since any litigating side would be in a position to file an application for appointment of a Court Commissioner after the recording of evidence has commenced. The Trial Court can deal with the said application, if it notices from the evidence recorded that the boundaries are being disputed and therefore measurement of the suit property and the adjacent properties for fixing the boundaries could be ordered.

7. As such, this petition is dismissed with the observation that after the recording of oral evidence, if any of the litigating sides move an application for appointment of a Court Commissioner, the Trial

Court would consider the same in the light of the evidence and the law applicable. The rejection of Exhibit 42 would not be an impediment and the Trial Court to consider such a request on its own merits.

( RAVINDRA V. GHUGE, J.)