

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

WRIT PETITION NO.4611 OF 2019

**HIRALAL JAGANNATH DESHMANE AND OTHERS
VERSUS
VITTHAL MARUTI DONGARE AND OTHERS**

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Advocate for the Petitioners : Shri V. S. Bedre

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 12th JUNE, 2019.

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PER COURT :

1. The petitioners/original plaintiffs are aggrieved by the order dated 15/11/2018 passed by the Trial Court, vide which, application Exhibit 50 filed by the plaintiff seeking appointment of a court commissioner for the second time in RCS No. 84/2012, has been rejected.

2. It is conceded that a court commissioner was earlier appointed. The plaintiffs contend that he has not carried out the measurements correctly and hence Exhibit 50 was filed. It is informed that oral evidence is yet to be recorded in the said suit.

3. This Court has consistently held that a court commissioner should not be appointed until the recording of oral evidence is completed. Some of the orders/judgments read as under :-

1. Gangaram Baban Tagad and others Vs. Sarubai Yashwant Tagad and others (WP No.6700/2011 dated 12/06/2013)

2. Shantabai Pralhad Anantwad Vs. Tahsildar, Tahsil Office Latur and others (WP No.1096/2018 dated 31/01/2018)

3. Syed Mushtaque Ahmad Syed Ismail and others vs. Syed Ashique Ali Khan Haidar Ali, 2012 (1) ALL MR 80 : 2011 (6) Mh.L.J. 334.

4. Dnyandeo Vithal Salke and others vs. Dagdu Kadar Inamdar, 2017 (3) Mh.L.J. 314.

5. Chandrakant Kashinath Dike and others vs. Smt.Satyabhama Vishwanath Dike and another, Writ Petition No.8877/2013 (Aurangabad Bench) decided on 17.01.2014.

6. Dhondiba Bapu Zaware vs. Santosh Paraji Zaware and others, Writ Petition No.4756/2014 (Aurangabad Bench) decided on 08.12.2014.

4. In view of the above, I do not find that the Trial Court has committed any error in rejecting application Exhibit 50.

5. It cannot be ignored that if any litigant is aggrieved by the measurement and the map placed on record by the court commissioner, such litigant can examine the court commissioner and can lead evidence to establish before the Trial Court that his measurements and his report are not reliable. If the Trial Court comes to this conclusion, it may consider appointing the court commissioner for the second time, in rarest of rare cases.

6. Considering the above, this petition being devoid of merit is, therefore, dismissed.

(RAVINDRA V. GHUGE, J.)

shp/-