

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

WRIT PETITION NO. 3991 OF 2019

**VITTHAL SAHEBRAO SONNAR AND OTHERS
VERSUS
SANJAY S/O MOKITRAM SONNAR AND ANOTHER**

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Advocate for the Petitioners : Shri M. P. Kale

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 07th JUNE, 2019.

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PER COURT :

1. The petitioners are aggrieved by the order dated 04/02/2019 passed by the Trial Court, vide which, application Exhibit 79 filed by the plaintiff seeking appointment of a court commissioner in RCS No. 349/2012, has been rejected.

2. The contention of the petitioners is, that the plaintiff has alleged encroachment at the hands of the petitioner defendants. Oral evidence of the plaintiff has been recorded. Joint measurement of the suit property is necessary. An earlier application Exhibit 71 filed by the petitioners for the same purpose, has been rejected and this became a ground for the Trial Court to pass the impugned order refusing appointment

of a court commissioner.

3. Reliance is placed upon the judgment of *Manohar Mahaderao Pagrut Vs. Sou. Sunanda Ramdas Tharkar, 2008 (4) ALL MR 718*.

4. I find from the impugned order that the Trial Court has noted that an earlier measurement of the suit land by the TILR is before the Court. Whether such measurement was proper or can be termed as being unreliable, will have to be decided at the end of the trial.

5. This Court has consistently held in the following orders/judgments that a court commissioner can be appointed after the recording of oral evidence is concluded as :-

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.

6. The issue is as regards the defendants having allegedly caused an encroachment. The burden would be on the plaintiffs to prove such encroachment by leading oral and documentary evidence. The defendants would also lead their evidence in support of their denial of having encroached upon the land of the plaintiff. In my view, after the recording of oral evidence has concluded, if any of the litigating sides moves an application for appointment of a court commissioner, the Trial Court would consider the said application in the light of the evidence recorded and provided it comes to a conclusion that it would require the assistance of a court commissioner.

7. In view of the above, I do not find that the impugned

order could be termed as being perverse or erroneous. This petition, being devoid of merit is, therefore, dismissed.

8. Needless to state, after the recording of oral evidence has concluded, if any of the litigating sides moves an application, the Trial Court would consider such application for appointment of a court commissioner in the light of the observations in the foregoing paragraph.

(RAVINDRA V. GHUGE, J.)

shp/-