

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

WRIT PETITION NO.7033 OF 2018

**SHIVAJI RAJARAM KACHARE
VERSUS
KANHU DASHRATH KHAIRE THROUGH LRS RUKHMINIBAI
KANHU KHAIRE AND OTHERS**

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Advocate for the Petitioner : Shri S. G. Kawade
Advocate for Respondent Nos. 1A to 1D, 4 and 5 : Shri A. B.
Jagtap h/f. Shri R. S. Kasar

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 12th MARCH, 2019.

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PER COURT :

1. The petitioner is aggrieved by the order dated 01/11/2017 passed by the Trial Court vide which application Exhibit 136 seeking appointment of a court commissioner in RCS No. 189/2012 (old No. 532/2010), has been rejected.

2. I have considered the strenuous submissions of the learned Advocates for the petitioner and respondent Nos. 1-A to 1-D, 4 and 5. None appears for respondent Nos. 2, 3 and 6.

3. The record reveals that a court commissioner was

already appointed in the said proceedings before the Trial Court. The T.I.L.R. acting as a court commissioner, has carried out the measurement of the properties and has submitted his measurement report alongwith a map.

4. Exhibit 136 was filed for seeking a second appointment of a court commissioner on the ground that the earlier court commissioner has not properly performed his functions.

5. It is settled law that the litigating sides, if aggrieved by the report of the court commissioner, can test the report by cross-examining the commissioner and if it is established that the said report is not reliable or dependable, the Court may ignore such a report. This Court has also consistently held that a court commissioner can be appointed after the recording of oral evidence is concluded. Following are some of the orders passed by this Court :-

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. In view of the above, this petition being devoid of merit, is dismissed.

7. Needless to state, after the recording of oral evidence has concluded and if the trial Court comes to a conclusion that the earlier report of the TILR is not reliable, it will consider the appointment of a court commissioner on its own merits.

(RAVINDRA V. GHUGE, J.)

shp/-