

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

28. WRIT PETITION NO. 7585 OF 2019

Dattu S/o Shankar Gunjal ...Petitioner

VERSUS

Jagannath S/o Shankar Gunjal and others ...Respondents

Mr. S.B. Tarde, Advocate, for petitioner

CORAM : RAVINDRA V. GHUGE, J.

DATE : 24th June, 2019

PER COURT:

1. The petitioner/plaintiff is aggrieved by the order dated 14th February, 2019 passed by the Trial Court rejecting the applications Exh. 7 & 22.

2. The petitioner/plaintiff moved an application Exh.7 seeking appointment of a Court Commissioner in Reg. civil suit No. 598/2014. Defendant No.3, who has filed a counter claim, moved an application Exh.22 for the same purpose. Both prayed before the Trial Court that the properties be measured, boundaries be fixed and the area of encroachment at the behest of either of them, be ascertained.

3. Reliance is placed upon the following judgments.

- (i) **Haryana Waqf Board Vs. Shanti Sarup and others, 2009 (II) OLR (SC) – 57,**
- (ii) **Lalitprabha Krishnaji and others Vs. Yunus Khan and others in Writ Petitions No. 354, 355, 359, 360, 361, 362 & 354 of 2016 decided on 15th October 2016 of the High Court of Bombay, at Panaji, Goa,**
- (iii) **Kalyan Santram Kawade Vs. Khanderao in Writ Petition No. 3600 of 2014 decided on 20th August, 2014 of the High Court of Bombay, Aurangabad Bench.**

4. The Trial Court has recorded in the impugned order that both the parties have alleged encroachment against each others. Defendant No.3 has filed a counter claim. Both of them prayed for appointment of a Court Commissioner, so that it can be discovered as to who is an encroacher and to what extent such an encroachment is caused. The Trial Court concluded that before recording of oral evidence, the parties desire to collect evidence through a Court Commissioner.

5. This Court has held in the following cases that the appointment of a Court Commissioner prior to the concluding of recording of oral evidence should not be permitted : -

- (a) **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,**
- (b) ***Dnyandeo Vithal Salke & others vs. Dagdu Kadar Inamdar, 2017(3) Mh.L.J. 314,***
- (c) ***Chandrakant Kashinath Dike and others vs. Smt. Satyabhama Vishwanath Dike and another, Writ Petition No.8877/2013 (Aurangabad Bench) decided on 17.01.2014,***

- (d) *Dhondiba Bapu Zaware vs. Santosh Paraji Zaware and others, Writ Petition No. 4756/2014 (Aurangabad Bench) decided on 08/12/2014,*
- (e) *Dipak Laxman Gadekar and anr. Vs. Trimbak Ravji Shirsath, Writ Petition No. 11593/2015 (Aurangabad Bench), decided on 23/08/2017,*
- (f) *Mahadeo s/o Vaijanath Bembalge Vs. Chandrakala w/o Ramesh Athane, Writ Petition No. 832/2018 (Aurangabad Bench), decided on 04/06/2018,*
- (g) *Dhondiram Nivrutti Pawar through L.Rs. Vs. Laxman Khashaba Pawar and others, Writ Petition No. 1196/2017, (Bombay Bench), decided on 23/01/2018,*
- (h) *Sanjay Balasaheb Khandare Vs. Vivek Surinder Mahajan and another, Writ Petition No. 4958/2018,(Aurangabad Bench), decided on 29/01/2018.*

6. In view of the above, I do not find that the Trial Court has committed any error in observing that these parties desire to discover encroachment and the extent to which such an encroachment has been committed, by seeking an appointment of a Court Commissioner. This being impermissible, the impugned order can neither be branded as being perverse nor erroneous.

7. The petition, being devoid of merit, is therefore, dismissed.

(RAVINDRA V. GHUGE)
JUDGE