

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9418 OF 2019

CHANDRAKANT DIGAMBAR KULKARNI
VERSUS
ARVIND SHRIRANG KULKARNI

Mr.K.K.Kulkarni, Advocate for the petitioner.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 31/07/2019

PER COURT :

1. The petitioner/original plaintiff is aggrieved by the order dated 01/04/2019 passed by the Trial Court by which his application Exh.60, seeking appointment of the TILR as a Court Commissioner in RCS No.27/2012, has been rejected.

2. The learned Advocate for the petitioner has strenuously criticized the impugned order. He submits that the measurement of the suit property is necessary. It is important that the well is located. The TILR is the only person, who can effectively perform this job. Reliance is placed upon the judgment of the Hon'ble Apex Court in the matter of Haryana Waqf Board Vs. Shanti Sarup and others [AIR 2008 SC (supp) 616] wherein the Hon'ble Apex Court has held

that alleged encroachment of the suit land can call for demarcation of the suit property, for which a local commissioner can be appointed.

3. In the instant case, the suit is only for the removal of an electric pump from the well. There is no dispute that there are 3 survey numbers / parcels of land involved in the suit. It is equally undisputed that there is only one well situated in the suit property. It is also undisputed that there is only 1 electric motor situated on the well.

4. I find that the Trial Court has rightly concluded that it does not require the assistance of the Court Commissioner since it has to decide whether the electric pump is installed by the defendant and whether it needs to be removed.

5. In view of the above, the facts being distinguishable from those appearing in the case of Haryana Wakf Board (supra), this petition being devoid of merit, is therefore dismissed.

(Ravindra V.Ghuge, J.)