

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

WRIT PETITION NO.12984 OF 2018

VITTHAL TATYABA KSHIRSAGAR
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for the Petitioner : Rode Dilip B..
AGP for Respondents 1 to 3 : Shri N.T.Bhagat.
Advocate for Respondents 4 and 5 : Shri B.B.Shelke h/f Shri D.R.Markad.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 07th January, 2019

Per Court:

1 I have heard the learned Advocates for the Petitioner,
Respondent Nos.4 and 5 and the learned AGP.

2 The grievance of the Petitioner is that the application (Exhibit
34) for seeking appointment of a court commissioner filed by the
Petitioner/ Plaintiff in RCS No.562/2015 has been rejected by the order
dated 22.06.2018.

3 There is no dispute that the court commissioner can be
appointed if the boundaries of the suit properties are disputed and if they
cannot be identified. For the joint measurement of the properties and for
fixing the boundaries, the court commissioner could be appointed.

4 However, this Court has consistently held, as like in the

following orders that the court commissioner should not be appointed until the recording of oral evidence is complete :-

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

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

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

(g) Baburao Jairam Borade vs. Fakira Tukaram Lanekar, Writ Petition No.1743/2018 decided on 28.08.2018 (Aurangabad Bench).

4 It is not disputed that the recording of oral evidence in the pending suit has not been concluded.

5 In view of the above, this Writ Petition is disposed of. It, however, be noted that after the recording of oral evidence is complete/ concluded, if either of the litigating sides moves the court for seeking appointment of a court commissioner, the Trial Court would consider the said application on it's own merits and in accordance with law, without being influenced by the observations set out in the impugned order.

kps

(RAVINDRA V. GHUGE, J.)