

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

**WRIT PETITION NO. 9440 OF 2019**

**SAYYED KHWAJA SAYYED MOHIYODDIN  
VERSUS  
DIGAMBAR GANGARAM HALDE**

...  
Advocate for the Petitioner : Shri A. A. Mukhedkar  
...

**CORAM : RAVINDRA V. GHUGE, J.**

**DATED : 1<sup>st</sup> AUGUST, 2019.**

...

***PER COURT :***

1. The petitioner/original defendant is aggrieved by the order dated 03/07/2019 passed by the Trial Court, rejecting Application Exhibit 27 by which the petitioner has sought appointment of a court commissioner in RCS No. 167/2018.

2. It is submitted that whenever there is a boundary dispute, the court commissioner has to be appointed. Reliance is placed upon the judgment of the Honourable Apex Court in the matter of *Haryana Waqf Board Vs. Shanti Sarup & Ors.*, **2008 AIR (SC) (Supp) 616.**

3. I have perused the application Exhibit 27. Issues in the

suit are yet to be cast. Obviously recording of oral evidence has not commenced.

4. The petitioner has moved an application contending that no land remains in the possession of the plaintiff, there are constructed houses in the land Gat No. 37/A situated at Vajirabad, Nanded and the plaintiff has suppressed the said fact and has filed the suit on the basis of a 7/12 extract. It is, therefore, prayed that a court commissioner may be appointed to ascertain the actual possession of the suit site.

5. There is no dispute that when it comes to any disagreement on the boundaries, a court commissioner can be appointed. This Court has consistently held that a court commissioner cannot be appointed until the recording of oral evidence has concluded. Some of the orders passed by this Court are as under :-

**(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. Notwithstanding the above, the averments in Exhibit 27

indicate that the petitioner is contending that there is no lay out plan on Gat No. 37/A and that there is no land in the possession of the plaintiff. By the appointment of the court commissioner, the petitioner desires that these aspects be ascertained and the actual possession of the suit site may be described by the court commissioner. This surely amounts to collection of evidence.

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

**(RAVINDRA V. GHUGE, J.)**

shp/-