

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

935 WRIT PETITION NO.12445 OF 2018

KAMAL DATTATRYA BORHADE THROUGH GPA
VERSUS
ANNASAHEB RADHAKRISHNA ROHOM AND ANOTHER

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Advocate for Petitioner : Shri Gandhi Amol S.

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CORAM : RAVINDRA V. GHUGE, J.

Dated: January 11, 2019

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PER COURT :-

1. I have heard the learned Advocate for the petitioner as against the impugned order dated 4.9.2018, by which, the trial Court has rejected application Exhibit 58 filed by the petitioner / plaintiff seeking second appointment of a Court Commissioner in RCS No.105 of 2012.

2. In view of the submissions of the petitioner, I have perused the impugned order. The trial Court has concluded that the suit is only for seeking injunction and there are no pleadings that the defendants have actually encroached upon the petitioner's property and have grabbed his land. In that backdrop, the trial Court has concluded that a second Court Commissioner is not required to be appointed.

3. Learned Advocate for the petitioner submits that an application is

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now filed before the trial Court seeking leave to amend the plaint after the recording of oral evidence in the case has been completed, because the defendants have actually encroached upon the suit property. The said application is pending.

4. In view of the above, this petition is disposed off. I find that if the application of the plaintiff for seeking amendment is allowed, it would form a different situation, in which, the trial Court would then have to assess the actual extent of encroachment and possibly for the purpose of proving encroachment, the parties may have to lead additional oral evidence.

5. This Court has consistently held that the Court Commissioner can be appointed after the recording of oral evidence is concluded and if there is any dispute as regards the boundaries. As such, the litigating parties will then have to deal with the said situation as is permissible in law.

(RAVINDRA V. GHUGE, J.)

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