

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

WRIT PETITION NO.15099 OF 2019

GULAM DASTAGIR DAUDSAHEB ANSARI
VERSUS
SABIYABEGUM YAKUB MOMIN

...

Advocate for the Petitioner : Shri Murge Estling S.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 16th December, 2019

Per Court:

1 The petitioner, original plaintiff in RCS No.317/2015, is aggrieved by the order dated 31.08.2019 passed by the Trial Court by which, the application exhibit 39 filed by the plaintiff seeking appointment of a court commissioner, has been rejected.

2 I have considered the strenuous submissions of the learned advocate for the petitioner/ plaintiff and have gone through the eight grounds formulated in the memo of the petition. I have also perused exhibit 39.

3 It appears from the prayers put forth in exhibit 39 that the plaintiff desires that the court commissioner should carry out the measurement of the portion of the land belonging to the plaintiff so as to find out, whether, it has 30 feet width on the east west side and whether,

it is 25 feet in length on the southern side and whether, there is construction of bricks and concrete for erecting three rooms. So also, plot no.83 belonging to the defendant was also sought to be measured. From the prayers put forth in exhibit 39, I find that this would amount to collecting of evidence. The Trial Court has, therefore, rightly concluded that in a suit for injunction, the court cannot appoint a court commissioner for collecting evidence and the obligation cast on the litigant cannot be shifted to the court commissioner.

4 In view of the above, this Writ Petition, being devoid of merit is, therefore, dismissed.

5 Needless to state, after recording of oral evidence is concluded in the suit, if any litigant files an application for seeking appointment of a court commissioner, the Trial Court would consider the same on it's own merits.