



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

908 WRIT PETITION NO.10204 OF 2025

**JALINDAR YASHWANT GHODEKAR
VERSUS
DATTU CHABU SHELAR AND OTHERS**

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Advocate for the petitioner : Mr.D.B.Rode

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**CORAM : ARUN R. PEDNEKER, J.
DATE : 21.08.2025**

P.C. :

1] By way of present Writ Petition, the petitioner challenges the order dated 25.06.2025 passed by the Civil Judge Senior Division, Shrigonda, Dist. Ahmednagar below Exh.175 in Regular Civil Suit No.57/2008 whereby the application filed under Order 26 Rule 9 of the Civil Procedure Code for appointment of Commissioner, an expert in determining age of the trees, is rejected. It is contended that on the bandh between the disputed blocks, there are certain trees of 40 to 50 years, hence, there is need to appoint Commissioner, as expert in determining age of the trees.

2] The learned counsel for the petitioner submits that the evidence of both parties is over and there are total

three measurements carried out by the land record authority of the said suit land and in every measurement reports the different area of encroachment is mentioned, as such, the application for appointment of Court Commissioner in determining age of the trees may be allowed. He further submits that considering the said fact, the impugned order passed by the trial Court is illegal.

3] The fact of existence of the trees are denied by the plaintiffs. It is stated that the evidence is closed long back. In stead of making final arguments, in spite of taking adjournments for arguments, this application is filed only to cause delay in decision of the case. The suit is filed for encroachment and possession on 25.02.2008 and the same is pending since last 17 years for trial and decision. The suit land is already measured by appointing the Court Commissioner and the same is conducted on 08.12.2015.

4] The evidence is closed long back and several adjournments were taken by the defendants. The Court has concluded that the parties have to lead evidence to prove their own case and already the measurement of the land through Court Commissioner is on record. As such, the appointment of Court Commissioner to determine the age of the trees on common bandh and existence of trees, cannot be made on facts of the case and in law. As such, the trial Court has rightly rejected the application for appointment of

Court Commissioner. Hence, there is no error in the impugned order passed by the trial Court. No case is made out to interfere in the writ jurisdiction of this Court. Hence, Writ Petition is dismissed.

[ARUN R. PEDNEKER]
JUDGE

DDC