

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3484 OF 2016

BHIMA DEORAO PATHARE AND OTHERS
VERSUS
RAMA KONDAJI PATHARE AND OTHERS

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Advocate for Petitioners : Shri K.F. Shingare
Advocate for Respondents 1 to 5 : Shri R.R.Kulkarni
h/f Shri A.S.Shejwal

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CORAM : RAVINDRA V. GHUGE, J.
Dated: January 12, 2017

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PER COURT :-

1. The petitioners are aggrieved by the order dated 10.2.2016, by which, application Exhibit 28 filed by the petitioners under Order XXVI Rule 9 of the CPC seeking appointment of a Court Commissioner was rejected on the ground that the Court Commissioner cannot be appointed to ascertain as to who is in possession or in cultivation.

2. I heard learned Advocate for the petitioners and Shri Shejwal on behalf of respondents 1 to 5.

3. In principle, the impugned order cannot be faulted since it is settled law in the light of the judgments of this Court in the matters of Sanjay Namdeo Khandare Vs. Sahebrao Kachru Khandare and others [2001 (1) Bom. C.R. 800], Syed Mushtaque Ahmad Syed Ismail

and others Vs. Syed Ashique Ali Khan Hatdar [2011 (6) Mh.L.J. 334 = 212 (2) Bom. C.R. 790] and Bhupendra Homraj [2014 (4) Mh.L.J.23], that a Court Commissioner cannot be appointed for collecting evidence on behalf of the Court. So also, the orders passed by this Court (Coram : S.V.Gangapurwala, J.) in Writ Petition No.9089 of 2011 (Ayyaz Shoukatali Sayyed Versus Mohd. Moid @ Ajamatali) dated 17.1.2012 and Writ Petition No. 8877 of 2013 (Chandrakant Kashinath Dike Vs. Smt. Satyabhama Vishwanath Dike) dated 17.1.2014, indicate that a Court Commissioner cannot be appointed prior to the commencement of the trial since the purpose of such appointment is to elucidate additional information, which may not have been placed before the trial Court.

4. Considering the above, I do not find any reason to interfere with the impugned order. However, it is equally settled that after the commencement of the trial, any litigating side is at liberty to file an application under Order XXVI Rule 9 of the CPC seeking an appointment of a Court Commissioner.

5. This petition is, therefore, disposed off with the above observations.

(RAVINDRA V. GHUGE, J.)

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