

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4727 OF 2017
(Laxman Mahipatrao Kulkarni Vs. Raosaheb Rangnath Deshmukh)

Mr.N.P.Bangar, Advocate for the petitioner.
Mr.Suvidh S.Kulkarni, Advocate for the respondent.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 29/08/2017

PER COURT :

1. The petitioner is aggrieved by the order dated 31/03/2017 by which the Trial Court has appointed a Court Commissioner for investigating and finding out whether agricultural implements are lying in the suit property and whether a tin shed is also found on the suit property.

2. Learned Advocate for the sole respondent has strenuously defended the impugned order and has cited the following 3 judgments :-

(1) ECE Industries Ltd., Vs.S.P.Real Estate Developers Pvt.Ltd., and another (AIR 2009 SC (Supp) 2093).

(2) Mohd.Hashim Ajmullah Khan Vs. Vasiullah Nasibullah Khan and others, AO No.754/2013 dated 03/09/2013.

(3) Annappa Mestha Vs. Mutayya Achari, 2002(3) Kar.LJ 650 = 2002(2) KCCR 1424.

3. Contention is that the respondent desires that the Court Commissioner should visit the suit land and find out whether the agricultural implements belonging to the respondent are lying in the field and whether a tin shed belonging to the respondent is erected in the said land.

4. The Trial Court has allowed the application Exh.60 and directed the appointment of an Advocate as an Court Commissioner for the purpose of identifying the agricultural implements and the tin shed.

5. Considering the law laid down in the matter of Kolhapuri Bandu Lakade Vs. Yallappa Chinappa Lakade (Decd.Thru.Pooja @ Poojari Y.Lakade and others) (2011(3) Bom.C.R. 807) and Bento Antonio Gomes alias Antonio Bento Gomes Vs. Rosario Salvador Carneiro and others (2014(3) All MR 790 = 2014(4) Mh.L.J.366), a Court Commissioner cannot be appointed for collecting evidence. In this case, the agricultural implements are said to be lying in an agricultural field.

6. This would then lead to investigating as to who owns the agricultural implements and who has constructed and erected a tin shed. Such activities are not to be brought within the ambit of the duties of a Court Commissioner merely because a Court Commissioner can be appointed at any time and at any stage in the suit u/s 75 r/w Order 26 Rule 9 of the CPC.

7. In the light of the above, the impugned order dated 31/03/2017 is quashed and set aside and application Exh.60 stands rejected. It, however, needs to be noted that the respondent/defendant has not filed a written statement. Nevertheless, after the recording of evidence is commenced, either of the litigating sides would be at liberty to prefer an application for appointment of a Court Commissioner and in that event, the said application would be considered on its own merits.

(Ravindra V.Ghuge, J.)