

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

WRIT PETITION NO. 2864 OF 2017

REVJI NAMDEO SHINDE AND ANOTHER
VERSUS
SOPAN MANAJI SHINDE AND ANOTHER

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Advocate for the Petitioners : Shri Nangare Prashant R..

Advocate for Respondents 1 and 2 : Shri Bade Patil K.D..

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 30th July, 2018

Per Court:

1 I have heard the strenuous submissions of the learned Advocates for the respective sides and have gone through the judgments delivered by this Court in *Kolhapuri Bandu Lakade vs. Yallappa Chinappa Lakade and others, Writ Petition No.6497/2009 decided on 14.03.2011, Ramkrishna Santu Kakad vs. Reojee Sahadu Kakad, Writ Petition No.2749/2012 decided on 04.03.2013, Chandrakant Kashinath Dike vs. Smt.Satyabhama Vishwanath Dike, Writ Petition No.8877/2013 decided on 17.01.2014 and Balkrishna Gangabishanji Zawar vs. Azmat Khan Suban Khan, Writ Petition No.8608/2012 decided on 27.09.2016.*

2 I am not required to advert to the entire submissions of the

learned Advocates keeping in view that RCS No.406/2014 is pending adjudication and both the learned Advocates submit that if the said suit is expedited, the litigating sides would consider filing a separate application for appointment of a court commissioner after the recording of evidence is over.

3 The suit has been preferred by Respondent No.1/Plaintiff for seeking recovery of possession, for removal of encroachment and for seeking injunction. After the Written Statement was filed, an application (Exhibit-27) for appointment of a court commissioner was filed by the Plaintiff and the Trial Court has allowed the same by the impugned order dated 23.01.2017.

4 The view consistently taken by this Court in the matter of **Chandrakant Dike (supra)**, was not cited before this Court in the matter of **Balkrishna Zawar (supra)**. Consequentially, the view taken by this Court with regard to the refusal of appointment of a court commissioner before commencing the recording of oral evidence, was not cited.

5 Since the learned Advocates consent for an expeditious hearing of RCS No.406/2014 with liberty to file a separate application for the appointment of a court commissioner after the recording of oral evidence is concluded, this Writ Petition is partly allowed. The impugned order dated 23.01.2017 is quashed and set aside and application Exhibit-27 is disposed of.

6 The Trial Court shall decide RCS No.406/2014 as
expeditiously as possible and preferably on or before 31.08.2019.

7 The litigating sides would extend their cooperation for the
recording of oral evidence and shall refrain from seeking unnecessary
adjournments.

8 After recording of oral evidence, if any of the litigating sides
desire the appointment of a court commissioner, they would be at liberty
to file such an application and the Trial Court would decide the said
application on its own merits.

kps

(RAVINDRA V. GHUGE, J.)