

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

WRIT PETITION NO. 3559 OF 2018

**DILIP SAHEBRAO PATIL AND OTHERS
VERSUS
DIPAK SUKDEV PATIL AND OTHERS**

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Advocate for the Petitioners : Shri Ujwal Subhash Patil
Advocate for Respondent Nos. 1 to 6 : Shri Paresh B. Patil

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 25th SEPTEMBER, 2018.

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PER COURT :

1. The petitioners/original defendants are aggrieved by the order dated 05/03/2018, passed by the Trial Court, by which, application Exhibit 44 seeking appointment of a Court Commissioner in RCS No. 146/2014 has been rejected.

2. I have considered the strenuous submissions of the learned Advocates for the respective sides.

3. Considering the order that I am passing, I am not required to advert to the prayer made by the petitioners in paragraph No. 3 of Exhibit 44, wherein they have sought the

appointment of the court commissioner practically for conducting a *roving* enquiry into the matter and which *prima-facie* appears to be for collecting evidence.

4. This Court has consistently held that a court commissioner can be appointed after the recording of oral evidence is concluded, in the matters of

(a) **Syed Mushtaque Ahmad Syed Ismail and others vs. Syed Ashique Ali Khan Haidar Ali**, 2012 (1) ALL MR 80 : 2011 (6) Mh.L.J. 334.

(b) *Dnyandeo Vithal Salke & others vs. Dagdu Kadar Inamdar*, 2017(3) Mh.L.J. 314.

(c) *Chandrakant Kashinath Dike and others vs. Smt. Satyabhama Vishwanath Dike and another*, Writ Petition No. 8877/2013 (Aurangabad Bench) decided on 17.01.2014.

(d) *Dhondiba Bapu Zaware vs. Santosh Paraji Zaware and others*, Writ Petition No. 4756/2014 (Aurangabad Bench) decided on 08/12/2014.

5. In view of the above, I do not find that the impugned

order could be termed as being perverse or erroneous. This petition, being devoid of merit, is therefore, dismissed.

6. It may be noted that in the event any of the litigating sides approaches the Trial Court with an application for appointment of a court commissioner, such an application shall be considered on its own merits without being influenced by the observations set out in the impugned order dated 05/03/2018.

(RAVINDRA V. GHUGE, J.)

shp/-