

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

917 WRIT PETITION NO. 8221 OF 2018

SHIKRISHNA MAROTI SHINDE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for Petitioners : Ms. Mohale R.M. h/f Shri Choudhary S.S.
AGP for Respondents 1 & 2 : Shri Patil K.S.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: September 26, 2018

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PER COURT :-

1. The petitioners / plaintiffs are aggrieved by the order dated 2.2.2018, passed by the trial Court, by which, application Exhibit 99 seeking appointment of the District Inspector of Land Records 9DSLRL or an Advocate as a Court Commissioner in RCS No. 168 of 2012 has been rejected.

2. Shri Choudhary, learned Advocate for the petitioners has criticized the impugned order. Reliance is placed upon the judgment of this Court in the matters of Sanjay Namdeo Khandare Vs. Sahebrao Kachru Khandare and others [2001 (1) Bom. C.R. 800] and Kolhapuri Bandu Lakade Vs. Yallappa Chinappa Lakade [2011 (3) Bom.C.R.807], to support his contention that the Court Commissioner can be appointed for the joint measurements of the properties of the litigating sides for the purpose of fixing the boundaries and preparation of a map.

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3. My attention is drawn to the grounds formulated in the memo of the petition.

4. The contention of Shri Choudhary to the extent of the joint measurement of the properties, when the boundaries are disputed, is correct. However, this Court has consistently held in series of orders passed in similar set of facts that a Court Commissioner is to be appointed for elucidating further information after the recording of oral evidence has concluded, which would assist the trial Court.

5. In the present case, the trial Court has observed in paragraph No.7 that the suit is pending recording of oral evidence of the plaintiffs for three years. The learned District Judge - 4 has ordered in MCA No.82 of 2012 that the suit should be decided before 31.5.2018.

6. Considering the above, I do not find that the impugned order could be branded as being perverse or erroneous. This petition being devoid of merits is, therefore, dismissed.

7. It is however, made clear that all the litigating sides shall forthwith proceed to adduce their oral evidence without further delay

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and without seeking adjournments on unreasonable grounds before the trial Court. In the event of an application being filed by any litigant after the recording of oral evidence is concluded, seeking appointment of a Court Commissioner, the trial Court would consider the same expeditiously and on its own merits without being influenced by the observations in the order dated 2.2.2018 below Exhibit 99.

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Kishanrao
Losarwar

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(RAVINDRA V. GHUGE, J.)

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