

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

917 WRIT PETITION NO. 10020 OF 2018

BABAN GANPAT WAGH
VERSUS
ASHRAM DADARAO WAGH AND OTHERS

...
Advocate for Petitioner : Shri Pathan Zafar M

...
CORAM : RAVINDRA V. GHUGE, J.
Dated: October 24, 2018

...

PER COURT :-

1 The petitioner / defendant No.2 is aggrieved by the order dated 12.6.2018, by which, the trial Court has rejected his application Exhibit 74 in RCS No.239 of 2010 and has refused permission for appointment of a Court Commissioner.

2 Learned counsel for the petitioner has strenuously criticized the impugned order and has placed reliance upon the seven grounds formulated by him in the memo of the petition.

3 I find that the observation of the trial Court that the application for appointment of the Court Commissioner has been filed at a belated stage after the recording of the oral evidence was concluded, would be principally unsustainable in the light of the consistent view taken by this

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

2- WRIT PETITION NO. 10020 OF 2018

Court that a Court Commissioner should not be appointed until the recording of evidence is concluded, in the following judgments:-

(1) 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],

(2) Nalubai Shinde and others Vs. Gopinath Shinde [2011(2) Mh.L.J.991],

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

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

(5) Dhondiba Bapu Zaware vs. Santosh Paraji Zaware and others, Writ Petition No.4756/2014 (Aurangabad Bench) decided on 08.12.2014.

4 Nevertheless, the pleadings of the petitioner indicates that he claims to be in possession of the disputed property for the last 20 years, he has an electricity and water connection obtained legally and he also has a fabrication workshop in the suit property. He has examined four witnesses before the trial Court.

5 Exhibit 74 indicates that the prayer clause is vague and an ambiguous prayer has been putforth. The petitioner has prayed that a Court Commissioner be appointed to inspect the suit property. Even in

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

3- WRIT PETITION NO. 10020 OF 2018

paragraph Nos.1 and 2, prior to the prayer clause, the petitioner has only reiterated as regards his occupation of the land and his electricity, water connection and fabrication shop. It is not specifically stated as to what activity is to be carried out by the Court Commissioner. It appears from the submissions of the petitioner advanced before the trial Court and this Court that she wants the Court Commissioner to inspect the suit property and conclude that the petitioner is in possession, is residing in a constructed home and is operating a fabrication shop.

6 It is crystallized law that the Court Commissioner is not to be appointed for collecting evidence. If the boundaries are disputed, the same can be measured and the boundaries can be fixed. The trial Court has, therefore, observed in the impugned order that this petitioner desires to collect evidence through a Court Commissioner.

7 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.

(RAVINDRA V. GHUGE, J.)

...