

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9781 OF 2018
(Sanjay Pawalas Tribhuwan and others Vs. Arun Vitthal Tribhuwan
and others)

Mr.Balaji Shinde h/f Mr.V.P.Latange, Advocate for the petitioners.

(CORAM : Ravindra V.Ghuge, J.)
DATE : 28/08/2018

PER COURT :

1. The petitioners, who are original defendants, are aggrieved by the impugned order dated 07/07/2018 by which application Exh.35 filed by the defendants seeking appointment of a Court Commissioner in RCS No.356/2017, has been rejected.

2. I have considered the submissions of the learned Advocate for the petitioners and have gone through the 4 grounds formulated by him in the memo of the petition.

3. This Court has consistently held in several judgments / orders, some of which are as under :-

(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 and 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.*

that a Court Commissioner should not be appointed before the recording of oral evidence in the matter is concluded.

4. Considering the above, I do not find that the impugned order could be faulted when the suit has been instituted on 22/12/2017 and the application for the appointment of a Court Commissioner is filed on 07/07/2018.

5. This petition, being devoid of merit, is therefore, dismissed.

6. After the recording of oral evidence in the suit is concluded, either of the litigating sides may request for appointment of a Court Commissioner and the Trial Court shall consider the said application on its own merits, without being influenced by the observations of this Court in this order and without being influenced by the observations of this Court.

Kranti
Hansraj
Shekatkar

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(Ravindra V.Ghughe, J.)