

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10633 OF 2018

SHAIKH RAIS S/O. SHAIKH BASHU AND OTHERS
VERSUS
SHAIKH RAIS S/O. SHAIKH MOHAMMAD AND OTHERS

Advocate for Petitioners : Mr. H.V. Tungar.
AGP for State : Mr. B.A. Shinde.

CORAM : RAVINDRA V. GHUGE, J.
Dated : 25th September, 2018.

PER COURT :

1. The petitioners/plaintiffs are aggrieved by the order dated 07/07/2018, passed by the Trial Court, by which, application Exhibit 38 filed by the plaintiffs seeking appointment of a Court Commissioner in R.C.S. No. 33/2013, has been rejected.

2. Learned counsel for the petitioner has strenuously criticized the impugned order and places reliance upon the judgment of this Court in the matters of Sanjay Namdeo Khandare Versus Sahebrao. Kachru Khandare and Others [2001 (1) Bom. C.R. 800] and Kolhapuri Bandu Lakade Versus 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.

3. It is, therefore, submitted that the impugned order deserves to be quashed and set aside and Exhibit 38 deserves to be allowed.

4. I find that this Court has consistently taken a view in series of order that a Court Commissioner should be appointed after the recording of an oral evidence if the Trial Court finds that the assistance of a Court Commissioner would bring better clarity in the matter so as to render assistance in taking decision. Following are some of the orders of this Court :

1. 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.

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

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

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

5. Considering 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. It however, needs to be mentioned that after the recording of oral evidence, if either of the litigating sides prefers an application for appointment of a Court Commissioner, the Trial Court would consider such an application on its own merits and without being influenced by its observations in the order dated 07/07/2018.

(RAVINDRA V. GHUGE, J.)