

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

911 WRIT PETITION NO. 11678 OF 2018

VINAYAK EKNATH THOKAL
VERSUS
SAKHUBAI PANDIT KHAWATE AND ORS

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Advocate for Petitioner : Shri Bhosle h/f Shri Muthal M.L.
Advocate for Respondents 1 to 3 : Shri Gore R.V.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: October 20, 2018

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PER COURT :-

1 I have heard the learned Advocates for the petitioner and defendants / respondents 1 to 3. Leave to delete respondents 4 to 10 is granted as they are non-contesting defendants. Deletion to be carried out forthwith.

2 RCS No.10 of 2008 was filed on 8.1.2018. Claims putforth in the suit by the plaintiffs are for seeking measurement of the suit lands, identifying the encroached area, injuncting the encroachers, recovery of possession of the encroached area and mesne profits.

3 The application Exhibit 6 praying for appointment of a Court Commissioner was filed on 8.1.2018 along with the suit. By the impugned order, the trial Court has allowed the application and appointed a Court Commissioner.

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4 On the one hand, I find that the litigating sides have not assisted the trial Court and on the other hand, I find that the trial Court is oblivious of the law that a Court Commissioner need not be appointed until the recording of oral evidence is concluded.

5 This Court has consistently held in the following judgments that a Court Commissioner should be appointed after the recording of the oral evidence and not for collecting evidence:-

(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],and

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

6 In view of the above, the impugned order dated 18.8.2018 is quashed and set aside. Application Exhibit 6 is rejected. Needless to state, the litigating sides are at liberty to apply for appointment of a Court Commissioner after the recording of oral evidence is concluded in RCS No.10 of 2018.

(RAVINDRA V. GHUGE, J.)

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