

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 12222 OF 2018

NAVNATH KISAN BADE
VERSUS
RAMBHAU BHIMAJI DALAVI AND ANOTHER

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Advocate for Petitioner : Shri Bade Patil K.D.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: October 31, 2018

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PER COURT :-

1 The petitioner / original plaintiff is aggrieved by the order dated 20.7.2018, by which, the trial Court has rejected application Exhibit 68 filed by the petitioner in RCS No.213 of 2009 seeking appointment of the Court Commissioner.

2 The contention of the petitioner is that his suit is for measurement of the suit property, demarcation and for injunction.

3 By Exhibit 68, it is prayed, that the properties on the North and Western side be measured and demarcated. So also, the property of defendant 2 be measured and marked. Similarly, it be inspected as to whether the road from Pathri to Amalner passes through S.No.95/3/B/1 and 95/3/B/2 and it be measured as to how much land was consumed in laying of the road. It is further prayed that the size of the land that

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remains to the share of Rambhau Bhimaji Dalvi should also be measured.

4 I find that the trial Court, after considering the above mentioned several prayers of the plaintiff seeking appointment of a Court Commissioner has rightly rejected Exhibit 68. Prima facie, it appears that Exhibit 68 practically is aimed at collecting evidence.

5 Nevertheless, this Court has consistently held that a Court Commissioner can be appointed after recording of oral evidence is concluded. Some of the orders passed by this Court are as under:-

(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.

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6 In view of the above, I do not find that any interference is called for when the suit is at the stage of recording of evidence.

7 As such, this petition is disposed off. It, however, be noted that if either of the litigating sides moves an application for appointment of a Court Commissioner after the recording of oral evidence has concluded in the suit, the trial Court would consider the said application on its own merits and without being influenced by its observations in the impugned order.

(RAVINDRA V. GHUGE, J.)

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