

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

910 WRIT PETITION NO. 9574 OF 2013

SHAIKH BABA RASULBHAI SHAIKH
VERSUS
SHAIKH MOHAMMAD RASULBHAI AND OTHERS

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Advocate for Petitioner : Mr. Shelke Manoj U.
Adv. for Respondents 1 to 9: Mr. Ashish Deshmukh h/f Mr. S.R. Bharad
Advocate for Respondent No.10 : Mr. K. R. Doke with Mrs. S.K. Doke

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CORAM : V. K. JADHAV, J.
DATED : 11th APRIL, 2018

PER COURT:-

1. Heard finally with consent of the parties at admission stage.
2. I do not find any substance in this writ petition. The petitioner-original defendant No.6 has filed an application Exh.147 under Order XXVI Rule 9 of C.P.C. for appointment of Court Commissioner. The respondents-plaintiffs have instituted the suit for declaration, ownership and decree of perpetual injunction in respect of the suit properties. The petitioner-original defendant No.6 has filed his consent written statement at Exh.118 before the trial court with a specific prayer that the suit be decreed in terms of the claim made therein. Learned counsel for the petitioner submits that by appointing the Court Commissioner the real controversy between the parties would be adjudicated.

Learned counsel for the petitioner in order to substantiate his contentions, placed reliance on the following judgments:-

- i) Kolhapuri Bandu Lakade vs. Vallappa Chinappa Lakade (since deceased through) Pooja @ Poojari Y. Lakade and others, reported in 2011 (3) Mh.L.J. 348
- ii) Ushabai Sharadchandra Bannore vs. Wasudeo Baliramji Mehare and others, reported in 2004 (2) Mh.L.J. 594

3. I do not find any substance in the submissions made on behalf of the petitioner-defendant No.6 that by appointing the Court Commissioner, the real controversy between the parties would be adjudicated. However, it is pertinent to note that the other respondents-defendants, who have contested the suit, have not filed any such application for appointment of Court Commissioner. Further, there is no boundary dispute. The respondents-plaintiffs have specifically pleaded in the suit that the defendants are trying to disturb their possession and some of the defendants have also given threats to them for breaking Bandh and also interfering into their rights of taking water from the well as per their share. In view of this, I find no reason for the petitioner to move the application seeking appointment of Court Commissioner.

4. In view of above, I find that the citations relied upon by learned counsel for the petitioner are not remotely applicable to the facts of the present case. There is no substance in the writ petition. The writ petition is pending since 2013. The petitioner has obtained the interim relief and as such further proceedings of the suit are stayed since 2013.

5. In view of above, the trial court is required to be directed to dispose of the suit, as expeditiously as possible. Hence, I proceed to pass the following order:-

O R D E R

- I. Writ petition is hereby dismissed. No costs.
- II. The trial court is hereby directed to dispose of the suit bearing R.C.S. No. 398 of 2003, as expeditiously as possible, preferably within six months from today.
- III. The parties shall co-operate the trial court for disposal of the suit within time bound manner, as aforesaid.
- IV. Writ petition is disposed of.

(V. K. JADHAV, J.)

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