

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 9668 OF 2018

LIMBRAJ BHANUDAS LAHADE AND ANOTHER
VERSUS
PRASANNA SHIVANAND KATHALE

...
Advocate for the Petitioners : Shri Sambhaji S. Wakure a/w Shri
D.A.Madake.

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 21st August, 2018

Per Court:

1 The Petitioners seek to challenge the order dated 08.09.2017 by which, the Trial Court has rejected the application Exhibit-19 filed in RCS No.546/2016 and has refused permission for appointment of a court commissioner.

2 The learned Advocate for the Petitioners has vehemently criticized the impugned order.

3 I have considered the strenuous submissions of the learned Advocate for the Petitioners and with his assistance, I have gone through the petition paper book.

4 The Respondent/ Plaintiff has filed the suit for seeking injunction against the Petitioners/ Defendants on 28.07.2016. The

application Exhibit-19 was filed by the Petitioners/ Defendants seeking appointment of a court commissioner for inspecting the boundaries, electric meter, it's meter number, construction area and for preparing the record of the internal goods and utensils inside the disputed room and house No.1 through a trained surveyor. By the impugned order dated 08.09.2017, the said application has been rejected by the Trial Court on the ground that the court commissioner cannot be appointed for collecting evidence.

5 This Court has consistently held in the following judgments that the court commissioner should not be appointed until the recording of oral evidence is concluded and for collecting evidence :-

- (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.*

6 Exhibit 19 clearly indicates that the Petitioners/ Defendant s
desire that the court commissioner should be appointed for inspecting
electric meter, it's number, area of construction and for preparing the list
of internal goods and utensils available in the disputed room. So also,
Exhibit-19 was filed at a premature stage.

7 In view of the above, the impugned order rejecting Exhibit-19
cannot be faulted. This Writ Petition being devoid of merit is, therefore,
dismissed.

8 Needless to state, after the recording of oral evidence, if
either of the litigating sides desire the appointment of a court
commissioner, the Trial Court would consider such an application on it's
own merits and in accordance with law.