

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

13 WRIT PETITION NO.3790 OF 2018

DEVIDAS GOVINDRAO KENDRE
VERSUS
BABU RAMA CHOLE AND OTHERS

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Advocate for Petitioner : Shri Sabnis A.N. h/f Shri Gunale V.D.
Advocate for Respondents 1 to 5, 7 & 8 : Shri Jadhavar Santosh S.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: April 15, 2019

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PER COURT :-

1. The petitioner / plaintiff is aggrieved by a cryptic order dated 6.11.2017, passed by the trial Court, rejecting application Exhibit 27, seeking appointment of a Court Commissioner in RCS No.340 of 2014.
2. It is an admitted position that Exhibit 27 was filed before the recording of oral evidence was completed. It is equally admitted that Exhibit 27 was a second application of the kind, which has been rejected.
3. This Court has consistently held in the following judgments that the Court Commissioner should not be appointed before the oral evidence is completed, unless in rare and peculiar cases:-

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

2- WRIT PETITION NO.3790 OF 2018

(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 and

(6) Kalyan Santram Kawade and others Vs. Khanderao @ Khandu Ganpati Kawade - Writ Petition No.3600 of 2014, dated 20.8.2014.

4. In the light of the above, this petition is disposed off. Needless to state, after the recording of oral evidence is concluded in the suit, if any of the parties prefer an application for appointment of a Court Commissioner, the trial Court would consider the same on its own merits, without being influenced by any of its earlier orders and after assessing whether it requires the assistance of a Court Commissioner.

(RAVINDRA V. GHUGE, J.)

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