

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

10 WRIT PETITION NO.4105 OF 2019

SALBA DEVBA CHIBHADE AND OTHERS
VERSUS
BHAGIRATH GANGARAM MIRASHE AND OTHERS

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Advocate for Petitioners : Shri Lomte Arun S.

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CORAM : RAVINDRA V. GHUGE, J.

Dated: July 01, 2019

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PER COURT :-

1. The petitioners/ plaintiffs are aggrieved by the impugned order dated 26.11.2018, vide which the trial Court has rejected their application Exhibit 30, seeking appointment of a Court Commissioner in RCS No.16 of 2015, prior to the completion of the recording of oral evidence.

2. This Court has consistently taken a view in the following matters that a Court Commissioner can be appointed after completion of the oral 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],

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

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(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.

3. Learned Advocate for the petitioners, therefore, seeks leave to withdraw this petition.

4. As such, this petition is disposed off as withdrawn.

5. It be noted that after the recording of the oral evidence is concluded, if either of the litigating sides, moves an application for appointment of a Court Commissioner for measurement of the suit properties of the litigating sides and for fixing the boundaries, the trial Court would consider the said application on it's own merits and without being influenced by any of the observations made in the impugned order dated 26.11.2018, below Exhibit 30.

(RAVINDRA V. GHUGE, J.)

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