

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

WRIT PETITION NO.4791 OF 2016

SHAIKHLAL SHAIKH AHMAD
VERSUS
ISMAEEL KHAN MEHBOOB KHAN PATHAN AND OTHERS

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Advocate for the Petitioner : Shri Parghane Madhukar M.
Advocate for Respondent 1 : Shri Shaikh Wajeed Ahemd.
Advocate for Respondent 3 : Shri S.B.Sontakke h/f Shri Shivam
Janakwade.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 26th February, 2019

Per Court:

1 The Petitioner is aggrieved by the order dated 29.12.2015 by which, his application Exhibit 22 seeking appointment of a court commissioner in RCS No.103/2014 has been rejected.

2 This Court has consistently held that the court commissioner should not be appointed until the recording of oral evidence is concluded. The court commissioner is not to be appointed for collecting evidence. The litigating sides have to stand on their own feet to support their averments by leading evidence. After the recording of oral evidence is concluded and in the event the Trial Court finds that further information needs to be elucidated by appointment of the court commissioner, it may consider

such appointment as long as the court commissioner is not required to collect evidence in the matter. Following are some of such orders passed by this Court :-

(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) Gangaram Baban Tagad and others Vs. Sarubai Yashwant Tagad and others (WP No.6700/2011 dated 12/06/2013).

(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.

(e) Dnyandeo Vithal Salke and others vs. Dagdu Kadar Inamdar, 2017 (3) Mh.L.J. 314.

(f) Shantabai Pralhad Anantwad Vs. Tahsildar, Tahsil Office Latur and others (WP No.1096/2018 dated 31/01/2018).

(g) Baburao Jairam Borade vs. Fakira Tukaram Lanekar, Writ Petition No.1743/2018 decided on 28.08.2018 (Aurangabad Bench).

4 In view of the above, I do not find that the order passed by the Trial Court could be branded as being perverse or erroneous. This Writ Petition being devoid of merit is, therefore, dismissed.

5 Needless to state, after recording of oral evidence is concluded in the matter, either of the litigating sides may file an application for seeking appointment of the court commissioner, if so advised. If such an application is filed, the Trial Court would consider the same on its own merits.

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(RAVINDRA V. GHUGE, J.)