

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

2 WRIT PETITION NO.8933 OF 2019

MANCHAK SHAMRAO BHALERAO AND ANOTHER
VERSUS
SHESHRAO BABURAO BHALERAO AND OTHERS

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Advocate for Petitioners : Mr. N. B. Khandare
Advocate for Respondent Nos.1 to 3 & 5 :Mr. S.P. Katneshwarkar

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 9th SEPTEMBER, 2019.

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PER COURT :

1. On 06.09.2019 I had dictated the following order :

"1. The petitioners / original defendant Nos.1 and 2 are aggrieved by the order dated 23.11.2018 passed by the Trial Court by which, the application exhibit 59 filed by the original plaintiffs seeking appointment of a court commissioner in Regular Civil Suit No. 117/2015, has been allowed.

2. It is admitted that the recording of oral evidence in the suit has not been concluded.

3. This Court has consistently passed the orders concluding that court commissioner should not be appointed until the recording of oral evidence is concluded. Some of the orders passed by this court are as under :

(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. Issue notice to respondent Nos.1 to 5 / original plaintiffs, returnable on 11.10.2019.

5. The learned advocate waives service for respondent Nos. 1 to 3 and 5. Humdast is granted for respondent No.4.

6. Since the petitioners make a categorical statement that the impugned order has still not been

implemented, the same shall stand stayed.

7. Copies of the petition paper book for issuance of notice shall be supplied on or before 16.09.2019, failing which, this petition shall stand dismissed without reference to the court on 18.09.2019".

2. Before I could sign the above dictated order, the litigating parties mentioned through their advocates that this matter could be disposed off in the light of the settled legal position. Hence, the said order was not signed and the matter was posted today by consent of the parties for passing orders.

3. Respondent Nos. 1 to 5 are the original plaintiffs. Respondent No.6 to 10 are the original co-defendants along with the petitioners. The learned advocate for respondent Nos. 1 to 3 and 5, who are original plaintiffs, submits on instructions that respondent No.4 does not desire to contest this petition, since rest of the petitioners have already appeared before this Court.

4. There is no dispute that the impugned order directing appointment of the Deputy Superintendent of Land Records as a Court Commissioner, was passed before recording of oral

evidence was concluded. Considering the law laid down in the above referred judgments / orders of this Court, a Court Commissioner can be appointed after recording of oral evidence is concluded and if the trial Court is of the view that further information is required to be elucidated through the Court Commissioner.

5. In view of above, this petition is partly allowed. The impugned order dated 23.11.2018 is quashed and set aside and application (Exhibit-59) stands rejected with liberty to the litigating sides to move an application for appointment of a Court Commissioner after the recording of oral evidence is concluded. If such an application is filed, the trial Court would consider the same on its own merits.

(RAVINDRA V. GHUGE, J.)

vsm/-