

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

WRIT PETITION NO. 8363 OF 2019

**CHANDRASHEKHAR SHANKAR NANDEDKAR
VERSUS
S. D. WADHAI DEPUTY DIRECTOR**

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Advocate for the Petitioner : Shri A. B. Kale
AGP for the Respondent- State : Shri S. R. Yadav - Lonikar

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 22nd JULY, 2019.

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PER COURT :

1. The petitioner plaintiff, in RCS No. 104/2016, is aggrieved by the impugned order dated 07/12/2018 passed by the Trial Court rejecting application Exhibit 40 seeking an appointment of a court commissioner under Order XXVI Rule 9 of the Code of Civil Procedure.

2. The learned Advocate for the petitioner has strenuously criticized the impugned order. He draws my attention to the 14 grounds formulated in the memo of the petition. He submits that the suit property needs to be properly measured so that the petitioner can proceed with the development of the property.

3. This Court has consistently held that a court commissioner should be normally appointed after 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) *Dnyandeo Vithal Salke & 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*

(e) *Dipak Laxman Gadekar and anr. Vs. Trimbak Ravji Shirsath, Writ Petition No. 11593/2015 (Aurangabad Bench), decided on 23/08/2017,*

(f) *Mahadeo s/o Vaijanath Bembalge Vs. Chandrakala w/o Ramesh Athane, Writ Petition No. 832/2018 (Aurangabad Bench), decided on 04/06/2018,*

(g) Dhondiram Nivrutti Pawar through L.Rs. Vs. Laxman Khashaba Pawar and others, Writ Petition No. 1196/2017, (Bombay Bench), decided on 23/01/2018,

(h) Sanjay Balasaheb Khandare Vs. Vivek Surinder Mahajan and another, Writ Petition No. 4958/2018, (Aurangabad Bench), decided on 29/01/2018.

4. The recording of oral evidence in the present suit is under way. The parties can lead oral evidence and after the conclusion of such evidence, if either of the litigating sides desires the appointment of a court commissioner to assist the Trial Court, an application could be filed.

5.. In view of the above, this petition is disposed off by holding that after the recording of oral evidence if an application for appointment of a court commissioner is tendered by any litigating side, it would be considered on its own merits and without being influenced by the impugned order dated 07/12/2018.

(RAVINDRA V. GHUGE, J.)

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