

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8249 OF 2018

SHIVRAJ RAMKISHAN SHEKDE AND OTHERS
VERSUS
KARBHARI ASHRUBA KHATING

Advocate for Petitioner : Mr. S.S. Halkude.
Advocate for Respondent No. 1 : Mr. K.S. Patil
h/f. Ms. R.M. Mohale-Choudhary.

CORAM : RAVINDRA V. GHUGE, J.
Dated : 14.03.2019

PER COURT :

1. The petitioners/defendants are aggrieved by the order dated 25.01.2018, by which, the prayer for appointment of a Court Commissioner has been rejected.

2. Learned counsel for the petitioners has strenuously criticized the impugned order and relies upon the judgments of this Court in the matters of Sanjay Namdeo Khandare Vs. Sahebrao Kachru Khandare and others [2001 (1) Bom. C.R. 800], and Kolhapuri Bandu Lakade Vs. Yallappa Chinappa Lakade [2011 (3) Bom.C.R.807]. It is stated that when boundaries are disputed, a Court Commissioner can be appointed for carrying out a joint measurement of the suit property and the properties of the litigating sides so that the lands could be measured and the boundaries could be fixed.

3. There is no debate that matters wherein boundaries are disputed, a Court Commissioner could be appointed. However, this Court has consistently held that a Court Commissioner should be appointed after the recording of oral evidence is over and that too in the event the trial Court deems it appropriate to take assistance of a Court Commissioner for seeking further details about the suit properties. Some of the orders of this nature passed by this Court, are as under :

(a) 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],

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

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

(d) Chandrakant Kashinath Dike and others vs. Smt.Satyabhama Vishwanath Dike and another, Writ Petition No.8877/2013 (Aurangabad Bench) decided on 17.01.2014.

(e) Dhondiba Bapu Zaware vs. Santosh Paraji Zaware and others,

Writ Petition No.4756/2014 (Aurangabad Bench) decided on
08.12.2014.

4. There is no dispute that an injunction has been granted in favour of the respondent plaintiff and the same has been sustained by the appellate court. It is also undisputed that the recording of evidence in RCS No. 546/2016, has not been concluded.

5. In view of the above, I do not find that the impugned order dated 25.01.2018, rejecting application Exhibit 28, could be termed as being perverse or erroneous. This petition, being devoid of merit, is therefore, dismissed.

6. Needless to state, after the recording of oral evidence in the suit is concluded, the litigating sides are at liberty to move an application for seeking appointment of a Court Commissioner and in event such application is filed, the trial Court would consider the said application on its own merits.

(RAVINDRA V. GHUGE, J.)