

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

WRIT PETITION NO.12977 OF 2019

APPARAO NAGORAO KARE AND OTHERS
VERSUS
RAMA NAGORAO KARE

...

Advocate for the Petitioners : Shri Sargar Vijaykumar B.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 17th October, 2019

Per Court:

1 The petitioners, who are the original defendants in RCS No.261/2018, are aggrieved by the order dated 18.01.2019 passed by the Trial Court by which, their application exhibit 21 seeking appointment of the court commissioner, has been rejected by concluding that the suit is filed purely for injunction and the court commissioner is not required to visit the suit property, in view of *Dnyandeo Vithal Salke and others vs. Dagdu Kadar Inamdar, 2017 (3) Mh.L.J. 314.*

2 The learned advocate for the petitioners has strenuously criticized the impugned order. He submits that these petitioners are all residing together in their respective residential accommodations. The plaintiff is the real brother of defendant no.1 and defendant nos.2, 3 and 4 are the biological sons of defendant no.1. In view of this position, it was

requested that the court commissioner be appointed so that the controversy would come to an end. The learned advocate has drawn my attention to the grounds formulated in the memo of the petition.

3 This Court has consistently held that the court commissioner can be appointed after the recording of oral evidence is concluded in the suit. 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 In view of the above, this Writ Petition is disposed off.

5 Needless to state, after the recording of oral evidence is concluded, if any litigant files an application for appointment of the court commissioner, the Trial Court would consider the said application on its own merits without being influenced by the observations set out in the impugned order.

6 I deem it appropriate to request the learned Civil Judge, Junior Division, Majalgaon to refer the pending proceeding between these parties to the mediator keeping in view that they are blood relatives and the matter could be resolved through mediation.