

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

WRIT PETITION NO. 4902 OF 2019

**CHATRABHUJ DASHRATH GAMBHIRE
VERSUS
ARJUN PANDURANG MANE AND ANOTHER**

...
Advocate for the Petitioner : Shri J. R. Patil h/f.
Shri R. T. Deshmukh

...

CORAM : RAVINDRA V. GHUGE, J.

DATED : 08th JULY, 2019.

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PER COURT :

1. The learned Advocate for the petitioner plaintiff seriously criticizes the impugned order dated 30/01/2019 passed by the Trial Court, by which, his application Exhibit 23 seeking appointment of a court commissioner in RCS No. 1323/2017, has been rejected.

2. I have considered the submissions of the learned Advocate and have gone through the grounds formulated by him in the memo of the petition.

3. The suit is for declaration of ownership and perpetual

injunction. Recording of evidence has still not commenced.

4. This Court has consistently held that a court commissioner should normally be appointed after the recording of oral evidence has 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.

5. Considering the above, I do not find any reason to cause an interference in the impugned order. This petition being devoid of merit is, therefore, dismissed.

6. It be noted that after the conclusion of the oral evidence, if an application for seeking appointment of a court commissioner is filed by any litigant, the Trial Court would consider the said application on its own merits and without being influenced by the observations in the impugned order dated 30/01/2019.

(RAVINDRA V. GHUGE, J.)

shp/-