

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION (ST) NO. 14166 OF 2019
AND
WRIT PETITION NO.3715 OF 2018

SHAHU VISHWANATH KOLHE AND ANOTHER
VERSUS
VIVEKANAND NIVRUTI KOLHE AND OTHERS

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Advocate for Petitioners / Applicants : Shri Shinde Balaji
h/f Shri Wakure S.A.

Advocate for Respondents 1 to 4 : Shri Hande A.D.

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CORAM : RAVINDRA V. GHUGE, J.

Dated: April 25, 2019

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PER COURT :-

1. Since, petitioner No.2 Ramdas has passed away, his L.Rs. are sought to be brought on record through the Civil Application. The death has occurred on 13.5.2018, which was orally informed to the learned Advocate for the petitioner, on 24.4.2019.

2. Considering the above and the objection of the respondent, this Civil Application is allowed. L.Rs. of deceased Ramdas shall be brought on record forthwith.

3. By the consent of the parties, the petition is heard.

4. By the impugned order dated 3.2.2018, the trial Court has

allowed application Exhibit 93, filed by defendant No.1 seeking appointment of the Court Commissioner in RCS No. 20 of 2016. Grievance is that the Court Commissioner has been appointed before the recording of oral evidence is concluded.

5. The learned Advocate for the respondents submits, in the light of the judgments delivered by this Court in the matter of Kolhapuri Bandu Lakade Vs. Yallappa Chinappa Lakade [2011 (3) Bom.C.R.807], and Sanjay Namdeo Khandare Vs. Sahebrao Kachru Khandare and others [2001 (1) Bom. C.R. 800], that the Court Commissioner can be appointed when the boundaries are disputed.

6. In the instant case, the DSLR was sought to be appointed for carrying out the measurement of the Gram Panchayat properties located within the Village Panchayat. The suit is for specific performance of contract and perpetual injunction with regard to the suit properties. The plaintiffs strenuously opposed Exhibit 93, on the ground that the issue is as regards proving the unregistered sale deed dated 25.11.2015 and their possession over the suit property.

7. This Court has consistently held that a Court Commissioner should not be appointed before the recording of oral evidence has concluded, except in rare circumstances. Some of the orders passed

by this Court are as under:-

(1) 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],

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

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

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

(5) Dhondiba Bapu Zaware vs. Santosh Paraji Zaware and others, Writ Petition No.4756/2014 (Aurangabad Bench) decided on 08.12.2014 and

(6) Kalyan Santram Kawade and others Vs. Khanderao @ Khandu Ganpati Kawade - Writ Petition No.3600 of 2014, dated 20.8.2014.

8. I do not find from the submissions of the learned Advocates, Exhibit 93, reply of the plaintiffs and the impugned order, that any such rare and peculiar circumstances are visible, which would warrant appointment of a Court Commissioner before the conclusion of recording of oral evidence.

9. In view of the above, the writ petition is allowed. The impugned order dated 3.2.2018 stands quashed and set aside and application Exhibit 93 stands rejected.

10. Needless to state, after the recording of oral evidence is concluded, either of the parties would be at liberty to apply for the appointment of the Court Commissioner and in the event the trial Court is convinced, it would proceed to pass a reasoned order.

(RAVINDRA V. GHUGE, J.)

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