

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

WRIT PETITION NO.5974 OF 2016

KUMARI SANDHYA SHIVAJI SURYAWANSHI AND ANOTHER
VERSUS
BHIMRAO YASHWANT SURYAWANSHI

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Advocate for the Petitioner : Shri Jadhav N.L.
Advocate for the Respondent : Ms.T.S.Bondar h/f Smt.Vinaya Dharurkar
(Muley).

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 08th April, 2019

Per Court:

1 The Petitioners are the original Plaintiffs in RCS No.231/2012, who are aggrieved by the order of the Trial Court dated 15.01.2016 by which, their application Exhibit 26 seeking appointment of the court commissioner, was rejected.

2 Though the learned Advocate for the Respondent sought an adjournment, I have heard the learned Advocate for the Petitioners and have perused the petition paper book with his assistance.

3 It is obvious that Exhibit 26 was filed within two years of the filing of the suit. The recording of oral evidence was not concluded.

4 This Court has consistently held that the court commissioner should not be appointed until the recording of oral evidence is over so as

to enable the Trial Court to consider whether, it needs the assistance of the court commissioner for elucidating further information. Some of such 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).

5 In view of the above, this Writ Petition is disposed of.

6 It shall, however, be noted that after the recording of oral evidence is concluded in RCS No.231/2012, in the event any of the litigating sides desires the assistance of the court commissioner and files an application to that effect, the Trial Court would consider the said application on its own merits and without being influenced by its observations in the impugned order dated 15.01.2016.

kps

(RAVINDRA V. GHUGE, J.)