

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5089 OF 2014
(Kishanrao s/o Uttamrao Kadam and another Vs. Anandrao s/o
Nanasaheb Zarikar)

Mr.G.K.Naik Thigle, Advocate for the petitioners.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 25/01/2019

PER COURT :

1. Though notice has been issued on 11/02/2015, the respondent is yet to be served. No interim relief has been granted to the petitioners.

2. Learned Advocate for the petitioners has addressed the Court in view of the grounds formulated in the memo of the petition. Contention is that the suit filed by the petitioners is for seeking declaration of joint ownership and possession of the plaintiffs over the suit property comprising of a house No.158 in Gut No.108, plot number 14.

3. It is further contended that the issue is as regards a confusion created by the defendant with respect to the boundaries of the property. Reliance is therefore placed upon Sanjay Namdeo

Khandare Vs. Sahebrao Khandare [2001(2) Mh.L.J. 959] and Kolhapuri Bandu Lakade Vs.Yallappa Chinappa Lakade, deceased, through Pooja Lakade and others [2011(3) All MR 599], to buttress the prayer for appointment of a Court Commissioner.

4. I have considered the impugned order in the light of the submissions of the learned Advocate. It is observed that the plaintiffs claim to be the owners and possessors of the suit property. In the face of a serious objection by the defendant, the burden would lie on the plaintiffs to prove the description and identity of the property. The Trial Court, therefore, concluded that the appointment of a Court Commissioner was sought for collecting evidence.

5. This Court has consistently held that normally a Court Commissioner could be appointed after the recording of oral evidence is concluded. Some of such orders passed 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.

6. It is well settled that if a boundary dispute occurs, a Court Commissioner can be appointed to undertake a joint measurement of the properties of all the litigating sides and mark the boundaries. In my view, this could be possible after the recording of oral evidence is concluded.

7. In view of the above, this petition is disposed of. In the event RCS No.249/2012 is not disposed of or has not reached the stage of delivering judgment, only then, either of the litigating sides would be at liberty to apply for the appointment of a Court Commissioner after the recording of oral evidence is concluded and the Court would consider the same on its own merits.

(Ravindra V.Ghuge, J.)