

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9602 OF 2017

SHAIKH SUBHAN SHAIKH CHAND
VERSUS
SUCHITRA ATMARAM DALVI AND OTHERS

Mr.S.R.Shirsat h/f Mr.S.S.Jadhavar, Advocate for the petitioner.
Mr.J.J.Patil, Advocate for respondent Nos. 1 and 2.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 30/08/2019

PER COURT :

1. Though this petition is shown in the category of unserved notice on respondent No.3, who is defendant No.3 in RCS No.42/2016, I have heard the learned Advocate for the petitioner and respondent Nos. 1 and 2.

2. The grievance of the petitioner/plaintiff is that his application Exh.16 for appointment of a Court Commissioner in the pending suit has been rejected by the impugned order dated 20/03/2017. Exh.16 was filed immediately after the suit was lodged.

3. This Court has consistently held that a Court Commissioner

should not be appointed until 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) *Dipak Laxman Gadekar and anr. Vs. Trimbak Ravji Shirsath, Writ Petition No. 11593/2015 (Aurangabad Bench), decided on 23/08/2017,*
- (7) *Mahadeo s/o Vaijanath Bembalge Vs. Chandrakala w/o Ramesh Athane, Writ Petition No. 832/2018 (Aurangabad Bench), decided on 04/06/2018,*
- (8) *Dhondiram Nivrutti Pawar through L.Rs. Vs. Laxman Khashaba Pawar and others, Writ Petition No. 1196/2017, (Bombay Bench), decided on 23/01/2018,*
- (9) *Sanjay Balasaheb Khandare Vs. Vivek Surinder Mahajan and another, Writ Petition No. 4958/2018,(Aurangabad Bench), decided on 29/01/2018.*
- (10) *Bhika Mahadu Katkar and another Vs. Arjun Bhimraj Ghode, WP No.1890/2019 (Aurangabad Bench) decided on 09/07/2019.*

(11) Sitaram Suklal Patil and another Vs. Vasudeo Suklal Patil, WP No.9626/2016 (Aurangabad Bench), decided on 31/07/2017.

4. In view of the above, the impugned order cannot be said to be perverse or erroneous. This petition, being devoid of merit, is therefore dismissed. Needless to state, after the recording of oral evidence is concluded in the pending suit, if any application for appointment of a Court Commissioner is filed by the litigating sides, the Trial Court would consider the said application on its own merits and without being influenced by the observations set out in the impugned order dated 20/03/2017.

(Ravindra V.Ghuge, J.)