

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

24. WRIT PETITION No. 6511 of 2019

Sarjerao Vishwanath Yadav and another ...Petitioners

VERSUS

Dnyanoba Uttam Bhosale ...Respondent

Mr. B.S. Chondhekar, Advocate for petitioners

Mr. P.D. Suryawanshi, Advocate for respondent.

CORAM : RAVINDRA V. GHUGE, J.

DATE : 24th June, 2019

PER COURT:

1. The petitioners are defendants in Reg. civil suit No. 84 of 2018. They are aggrieved by the order of the Trial Court dated 10th April, 2019 rejecting application Exh. 27 seeking an appointment of a Court Commissioner.

2. I have considered the strenuous submissions of the learned Advocates for the respective sides.

3. I find that, no sooner the pleadings were completed in the suit, petitioners filed Exh. 27 seeking an appointment of a Court Commissioner for the purpose of ascertaining the truth and bringing the actual possession of the suit property on record as

well as finding out the reasons for the dispute in between the parties by appointing an Advocate Court Commissioner. The Trial Court has rejected the said application by concluding that a Court Commissioner need not be appointed for the reasons set out in Exh. 27.

5. This Court has consistently held that a court commissioner should be appointed after the recording of oral evidence is concluded and only if the Trial Court is of the view that it requires the assistance of a court commissioner. Following are some of the orders passed by this Court :-

4. This Court has held in the following matters that a Court Commissioner cannot be appointed for collecting evidence.

- (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. The application Exh. 27 apparently indicates that the petitioners seek to cause local inspection for ascertaining the truth about the actual possession of the suit property and to investigate as regards the reasons for the dispute between the parties. I find that the Trial Court has rightly rejected application Exh. 27.

5. In view of the above, this petition being devoid of merit, is therefore, dismissed.

(RAVINDRA V. GHUGE)
JUDGE