

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

WRIT PETITION NO. 7322 OF 2019

**BHAUSAHEB SOPAN ADHAV AND ANOTHER
VERSUS
RAJARAM FAKKAD ADHAV AND OTHERS**

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Advocate for the Petitioners : Shri A. S. Sawant

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 19th JUNE, 2019.

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PER COURT :

1. The petitioner original defendants are aggrieved by the order dated 13/03/2019 passed by the Trial Court, vide which, application Exhibit 39 filed by the petitioners seeking appointment of a court commissioner in RCS No. 990/2014, has been rejected.

2. I have considered the strenuous submissions of Shri Sawant learned Advocate for the petitioners who has seriously criticized the impugned order. He submits that the impugned order deserves to be quashed and set aside and application Exhibit 39 deserves to be allowed. He has drawn my attention to the grounds formulated by him in the memo of the petition.

He, however, concedes that the application for temporary injunction Exhibit 5 is still pending. He has taken me through the pleadings set out in the plaint and the documents available.

3. The Trial Court, while rejecting the application for seeking appointment of a court commissioner, has noted that a court commissioner cannot be appointed for collecting evidence and in the case in hand, the issue can be resolved with the aid of available revenue records.

4. This Court has consistently held that a court commissioner should normally be appointed after the recording of oral evidence is concluded. If the Trial Court forms a view that it would require additional information which could be gathered by the appointment of the court commissioner, it may consider appointing such a court commissioner after the recording of oral evidence is concluded. Some of the orders/judgments passed by this Court are as under :-

1. Gangaram Baban Tagad and others Vs. Sarubai Yashwant Tagad and others (WP No.6700/2011 dated 12/06/2013)

2. Shantabai Pralhad Anantwad Vs. Tahsildar, Tahsil Office Latur and others (WP No.1096/2018 dated 31/01/2018)

3. 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.

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

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

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

5. In view of the above, this petition is disposed off with liberty to either of the litigating sides to move an application for appointment of a court commissioner after the recording of oral evidence is concluded. Such an application would be considered by the Trial Court on its own merits and only if it finds that it would be advantageous for the Court to seek the assistance of a court commissioner.

(RAVINDRA V. GHUGE, J.)

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