

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.12341 OF 2019

RATAN NAGU MASALKAR
VERSUS
RAJARAM DAGADU LAWANDE AND ORS

...
Advocate for Petitioner : Shri Garud S.N. h/f Shri Garud N.C.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: November 06, 2019

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PER COURT :-

1. The petitioner / plaintiff in RCS No.260 of 2015 is aggrieved by the order dated 27.11.2018, by which, the trial Court has rejected application Exhibit 34 and has declined to appoint a Court Commissioner.

2. The learned Advocate for the petitioner has strenuously criticized the impugned order. He has canvassed the four grounds formulated in the memo of the petition and I have gone through the petition paper book with his assistance. Reliance is placed upon the view taken by this Court in the matter of Bhupendra Bhagwat Turkar Vs. Homraj Zituji Meshram [2014 (4) Mah.L.J.231].

3. The record reveals that the suit has been preferred by the petitioner for perpetual injunction. Vide Exhibit 34, a TILR is sought

to be appointed for carrying out the measurement of the suit property and for tracing out an encroachment, if any. It is not in dispute that the recording of oral evidence in the suit is yet to be concluded. The trial Court has rejected Exhibit 34 on a ground that the Court Commissioner could be appointed only if the Court finds that further information will have to be elucidated.

4. This Court has held consistently that a Court Commissioner should not be appointed before the recording of oral evidence is concluded. Some of the orders passed by this Court 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.*

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

6. Nevertheless, after the recording of oral evidence is concluded

in the matter, if any litigant files an application for seeking appointment of a Court Commissioner, the trial Court would consider the same on its own merits and without being influenced by the impugned order.

(RAVINDRA V. GHUGE, J.)

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