

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

WRIT PETITION NO. 7318 OF 2019

DATTU KAUTIK PATIL
VERSUS
SHALIGRAM KAUTIK PATIL

WITH
920 WRIT PETITION NO. 7319 OF 2019

DATTU KAUTIK PATIL
VERSUS
BHIVSAN KAUTIK PATIL

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Advocate for the Petitioner : Shri G. S. Rane
Advocate for the Respondent : Shri C. V. Dharurkar

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 19th JUNE, 2019.

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PER COURT :

1. In both these matters, the same petitioner original defendant is aggrieved by the similar impugned orders dated 15/03/2019 below Exhibit 69 in RCS No. 16/2014 and below Exhibit 78 in RCS No. 17/2014.

2. By the impugned orders, the Trial Court has rejected the applications seeking appointment of a court commissioner.

3. I have heard the learned Advocates for the respective sides. With their assistance, I have gone through the petition paper book. It is informed that the stage in both the suits is for recording of oral evidence of the plaintiffs, who are the respondents herein.

4. It appears from the record that the plaintiffs have sought perpetual injunction. The plaintiffs and the defendant are the real brothers. There was a partition earlier by a partition deed and the shares were described as 188/1, 188/2 ad 188/3. Presently, the dispute is between the brothers with regard to Gat Nos. 188/2 and 188/3.

5. 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 cases in hand, the issue can be resolved with the aid of available revenue records.

6. 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 is of the 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.**

7. In view of the above, both these petitions are 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.

8. I deem it appropriate to record that since the three real brothers are litigating amongst themselves, the Trial Court may consider referring the matter to the mediator with the hope of resolving the dispute amongst them.

(RAVINDRA V. GHUGE, J.)

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