

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

WRIT PETITION NO. 4958 OF 2018

**SANJAY BALASAHEB KANAKDANDE
VERSUS
VIVEK SURINDER MAHAJAN AND ANOTHER**

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Advocate for Petitioners : Shri S. D. Tawshikar
Advocate for Respondent No.1 : Shri P. S. Mehta
Advocate for Respondent No. 2 : Shri Ameet R. Vaidya

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 29th JANUARY, 2019.

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PER COURT :

1. The petitioner - original defendant No.1 is aggrieved by the order dated 02/05/2018 passed by the Trial Court, by which, application Exhibit 20 filed by the plaintiff seeking appointment of a court commissioner under Order XXVI Rule 9 of the CPC in RCS No. 38/2018, has been allowed. It is contended that pleadings in the suit are still not complete, interim orders are yet not passed and recording of oral evidence has obviously not being concluded.

2. The learned Advocate for the plaintiff Shri Mehta has strenuously supported the impugned order. He submits that

there is some confusion in the boundaries. Said dispute about the compound wall or the four boundaries or the marginal space cannot be resolved without a proper inspection of the property. The defendant though opposed while submitting his say to Exhibit 20, it is finally recorded that the court may pass an appropriate order.

3. I find that this Court has consistently taken a view that a court commissioner should not be appointed until recording of oral evidence is concluded. Some of such orders are as under :-

(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.

4. In the instant case, the suit is registered on 02/05/2018 and the application seeking appointment of a court commissioner is filed on the same date. Apparently, the litigating sides have not properly assisted the Trial Court by pointing out the law.

5. In view of the above, this petition is allowed. The impugned order dated 02/05/2018 is quashed and set aside and application Exhibit 20 stands rejected.

6. Needless to state, after the recording of oral evidence is concluded, if either of the sides prefer an application for seeking appointment of a court commissioner, the Trial Court would consider the said application on its own merits.

(RAVINDRA V. GHUGE, J.)

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