

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

WRIT PETITION NO.6630 OF 2019

SUJATABAI BHAGWAN WAGHMARE AND OTHERS
VERSUS
KISHAN RAMA DHOTARE

...

Advocate for the Petitioners : Shri Ghatol Patil Shahaji B.

Advocate for the Respondent : Shri Ashish B Shinde

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 10th June, 2019

Per Court:

1 The petitioners/ original defendants are aggrieved by the order dated 30.04.2019 by which, the Trial Court has appointed the court commissioner in RCS No.72/2019.

2 I have heard the learned advocates for the respective sides and have gone through the petition paper book with their assistance.

3 The respondent/ original plaintiff preferred RCS No.72/2019 on 18.02.2019. ON 02.03.2019, the defendants filed their written statement. On the same day, the application exhibit 10 is filed by the respondent/ plaintiff seeking appointment of the court commissioner and by the impugned order, exhibit 10 is allowed and the court commissioner has been appointed.

4 There is no dispute that the application for temporary injunction is pending, inasmuch as, the recording of oral evidence has not

commenced.

5 It is well settled, in view of the pronouncements in the matters of *Sanjay Namdeo Khandare vs. Sahebrao Kachru Khandare and others, 2001 (2) Mh.L.J. 959* and *Kolhapuri Bandu Lakade vs. Yallappa Chinappa Lakade and others, 2011 (3) Mh.L.J. 348*, that the court commissioner is not to be appointed for collecting evidence. The litigating sides have to stand on their own feet to support their averments by leading evidence. After the recording of oral evidence is concluded and in the event the Trial Court comes to the conclusion that the evidence recorded is insufficient and finds that further information needs to be elucidated by the appointment of the court commissioner, it may consider such appointment.

6 This Court has consistently held that the court commissioner should not be appointed until the recording of oral evidence is concluded. Following are some of such orders passed by this Court :-

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

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

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

*(g) Baburao Jairam Borade vs. Fakira
Tukaram Lanekar, Writ Petition No.1743/2018
decided on 28.08.2018 (Aurangabad Bench).*

7 In view of the above, this Writ Petition is allowed. The
impugned order is quashed and set aside. Exhibit 10 stands rejected.

8 It is, however, made clear that after the recording of oral and
documentary evidence is concluded in the matter, if either of the litigating
sides files an application for seeking appointment of a court commissioner,
if so advised, the Trial Court would consider the same on its own merits.