

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

WRIT PETITION NO. 7314 OF 2019

**SHRIMANT NARAYAN INGALE AND OTHERS
VERSUS
ZUMBARBAI BALASAHEB INGALE**

...
Advocate for Petitioners : Shri S. J. Salunke

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 19th JUNE, 2019.

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PER COURT :

1. The petitioners are aggrieved by the order dated 10/04/2019 passed by the Trial Court, by which, application Exhibit 19 filed by the petitioner defendants seeking an appointment of a court commissioner in RCS No. 607/2018, has been rejected.

2. The learned Advocate for the petitioner defendants submits that the defendants have specifically stated in the written statement that the plaintiff has not submitted a sketch map of the suit property and a vague description has been put forth. It is also averred that the suit property as alleged by the plaintiff is not even in existence. Hence, the defendants filed

Exhibit 19 seeking appointment of a court commissioner. It is added that the plaintiff is not even in possession of any such property.

3. This Court has consistently held that a court commissioner should normally be appointed only after the recording of oral evidence is concluded. Some of such orders/judgments 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.**

4. The learned Advocate submits that the application seeking temporary injunction is pending before the Trial Court. If the suit property cannot be identified and if the plaintiff is successful in acquiring an order of injunction, an irreparable harm would be caused to the defendants. I find that the apprehension of the defendants is misplaced since the Trial Court would surely consider this aspect before passing its orders on the Exhibit 5.

5. In view of the above, I do not find that the impugned order dated 10/04/2019 could be termed as being perverse or erroneous. This petition, being devoid of merit is, therefore, dismissed.

6. It is, however, made clear that after the recording of oral evidence is concluded, if any of the litigating sides, moves an application seeking appointment of a court commissioner, such application would be considered by the Trial Court on its own merits.

(RAVINDRA V. GHUGE, J.)

shp/-