

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

WRIT PETITION NO. 8263 OF 2019

**BHASKAR BALIRAM MALI
VERSUS
VISHWANATH NARAYAN MALI AND OTHERS**

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Advocate for the Petitioner : Shri M. U. Shelke
Advocate for Respondent No.1 : Shri A. D. Mane h/f.
Shri S. G. Kawade

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 30th JULY, 2019.

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PER COURT :

1. The petitioner/original defendant No. 3 is aggrieved by the impugned order dated 11/01/2019 passed by the Trial Court, by which, application Exhibit 48 filed by the sole plaintiff seeking appointment of a court commissioner in RCS No. 130/2014, has been allowed.

2. I have perused the grounds formulated by the petitioner in the memo of the petition. It is submitted that respondent Nos. 2 to 4 are formal parties and they can be deleted. Deletion is permitted.

3. The learned Advocate for the original plaintiff has strenuously opposed this petition. He submits that an equitable order has been passed by the Court. It is not a cryptic order, but a detailed order. The Trial Court was of the view that as there is an encroachment, the court commissioner could measure the suit lands and fix the boundaries and this would have assisted the Trial Court. He prays that this petition be dismissed with heavy costs.

4. In my view, this Court has consistently held that a court commissioner can be appointed after the recording of oral evidence has concluded in the matter. If the Trial Court is of the view that the court commissioner would assist in the proper adjudication of the matter, it may direct the appointment of the court commissioner, after the recording of oral evidence has concluded. Some of such orders passed by this Court 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

(e) Dipak Laxman Gadekar and anr. Vs. Trimbak Ravji Shirsath, Writ Petition No. 11593/2015 (Aurangabad Bench), decided on 23/08/2017,

(f) Mahadeo s/o Vaijanath Bembalge Vs. Chandrakala w/o Ramesh Athane, Writ Petition No. 832/2018 (Aurangabad Bench), decided on 04/06/2018,

(g) Dhondiram Nivrutti Pawar through L.Rs. Vs. Laxman Khashaba Pawar and others, Writ Petition No. 1196/2017, (Bombay Bench), decided on 23/01/2018,

(h) Sanjay Balasaheb Khandare Vs. Vivek Surinder Mahajan and another, Writ Petition No. 4958/2018, (Aurangabad Bench), decided on 29/01/2018.

5. In view of the above, this petition is partly allowed. The

impugned order dated 11/01/2019 is quashed and set aside and application Exhibit 48 stands rejected.

6. It be noted that after the recording of oral evidence has concluded, if any application is filed by a litigating side seeking appointment of a court commissioner, the Trial Court would consider the same on its own merits and without being influenced by the observations in the impugned order below Exhibit 48, which is set aside.

(RAVINDRA V. GHUGE, J.)

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