

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8989 OF 2019

SANGITA MACCHINDRA THORAT
VERSUS
CHANGUNABAI RAOSAHEB BELOTE AND OTHERS

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Advocate for Petitioners : Shri Misal R.C. h/f Shri Sawant Amol S.
Advocate for Respondent 2 : Shri Kasar R.S.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: July 24, 2019

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PER COURT :-

1. Leave to delete respondents 6 to 18, who are original defendants. Deletion to be carried out forthwith.
2. The petitioner / defendant No.1 is aggrieved by the order dated 29.4.2019, passed by the trial Court, allowing application Exhibit 7, filed by original plaintiffs seeking appointment of a Court Commissioner even before recording of evidence had commenced. Exhibit 7 was filed on 26.5.2016 and the suit was filed on the same date. The trial Court has practically allowed the plaintiffs to collect evidence even before the written statement could be filed by the defendants.
3. This Court has consistently held that a Court Commissioner

can be appointed after the recording of oral evidence has completed.

Some of the orders passed by this Court are as under:-

(1) Syed Mushtaque Ahmad Syed Ismail and others Vs. Syed Ashique Ali Khan Hatdar [2011 (6) Mh.L.J. 334 = 212 (2) Bom. C.R. 790],

(2) Nalubai Shinde and others Vs. Gopinath Shinde [2011(2) Mh.L.J.991],

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

(4) Chandrakant Kashinath Dike and others vs. Smt.Satyabhama Vishwanath Dike and another, Writ Petition No.8877/2013 (Aurangabad Bench) decided on 17.01.2014,

(5) Dhondiba Bapu Zaware vs. Santosh Paraji Zaware and others, Writ Petition No.4756/2014 (Aurangabad Bench) decided on 08.12.2014 and

(6) Kalyan Santram Kawade and others Vs. Khanderao @ Khandu Ganpati Kawade - Writ Petition No.3600 of 2014, dated 20.8.2014.

4. In view of the above, this petition is allowed. The impugned order dated 29.4.2019 is quashed and set aside and Exhibit 7 stands rejected.

5. It may be noted that after the recording of oral evidence is concluded, if any litigant files an application for seeking appointment of a Court Commissioner, the trial Court would consider the said application on its own merits and without being influenced by the observations set out in the impugned order.

6. Learned Advocate for the plaintiffs pray that the plaintiffs be permitted to withdraw the amount already deposited as charges towards the appointment of the Court Commissioner. As such, the plaintiffs are permitted to withdraw the said amount, provided the Court Commissioner has not complied with the impugned order passed by this Court. If the impugned order is already complied with, the plaintiffs cannot withdraw the amount and report of the Court Commissioner shall be filed and shall not be utilized in the said pending proceedings.

(RAVINDRA V. GHUGE, J.)

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