

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

WRIT PETITION NO.10292 OF 2019

MURLIDHAR GOVIND WANI AND OTHERS
VERSUS
TRYAMBAK DAGDU KOLHE AND OTHERS

...

Advocate for the Petitioners : Shri Talhar Ajay G.

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**CORAM: RAVINDRA V. GHUGE, J.
DATE :- 21st August, 2019**

Per Court:

1 The Petitioners/ plaintiffs are aggrieved by the order dated 17.12.2018 passed by the Trial Court by which, the application exhibit 30 filed under Section 75 r/w Order 26 Rule 9 of the Code of Civil Procedure for seeking appointment of the court commissioner, is rejected. The suit is of 2016. The recording of oral evidence has not been concluded.

2 This Court has consistently held that the court commissioner should not be appointed until the recording of oral evidence is concluded. Some of the 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) 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).*

3 In view of the above, this Writ Petition being devoid of merit is, therefore, dismissed.

4 Nevertheless, after the recording of oral evidence is concluded, if any litigant files an application for seeking appointment of the court commissioner, the Trial Court would consider the same on its own merits without being influenced by the observations set out in the impugned order.