

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

WRIT PETITION NO.4332 OF 2014

Rajendra Bhatu Chaudhari,
Age : 36 years, Occupation : Business,
R/o CTS No.3221, V.K.Chaudhari Market,
Agra Road, Dhule,
Taluka and District Dhule.

...PETITIONER
(Orig. Plaintiff)

-VERSUS-

Sunil Shamrao Mahale,
Age : 46 years, Occupation : Trader,
R/o CTS No.3032, Usgalli,
Dhule, Tq. and District Dhule.

...RESPONDENT
(Orig. Defendant)

...
Advocate for the Petitioner : Shri Vinesh Solshe h/f Shri Patil Mahesh H.
Advocate for the Respondent : Shri Kulkarni Mukul S.
...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 26th February, 2019

Oral Judgment :

1 Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2 The Petitioner/ original Plaintiff is aggrieved by the order dated 29.04.2013 passed by the Trial Court by which, his application Exhibit 21 filed in RCS No.491/2012 seeking appointment of the court

commissioner under Order 26 Rule 9 of the Code of Civil Procedure, has been rejected.

3 I have considered the strenuous submissions of the learned Advocates for the respective sides.

4 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 finds that further information needs to be elucidated by appointment of the court commissioner, it may consider such appointment as long as the court commissioner is not required to collect evidence in the matter.

5 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).

6 In view of the above, I do not find that the order passed by the Trial Court could be branded as being perverse or erroneous. This Writ Petition being devoid of merit is, therefore, dismissed.

7 Needless to state, after the recording of oral evidence is concluded in the matter, either of the litigating sides may file an application for seeking appointment of a court commissioner, if so advised. If such an application is filed, the Trial Court would consider the

same on it's own merits.

8 Rule is discharged.

kps

(RAVINDRA V. GHUGE, J.)