

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

WRIT PETITION NO. 8878 OF 2019

**KADUBA SHAMRAO WAGH
VERSUS
KADUBA RAMRAO GAYKE AND ANOTHER**

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Advocate for the Petitioner : Shri U. S. Patil
Advocate for Respondent Nos. 1 and 2 : Shri R. V. Gore h/f.
Shri P. B. Salunke

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 23rd JULY, 2019.

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PER COURT :

1. I have heard the learned Advocates for the respective sides and have gone through the petition paper book with their assistance.

2. By the impugned order dated 26/06/2019, the Trial Court has allowed application Exhibit 09 filed by the plaintiff in RCS No. 47/2018, seeking appointment of a court commissioner, which has been allowed.

3. The learned Advocate for the respondents has strenuously supported the impugned order. He submits that,

the suit has been filed purely for removing encroachment and for calculating mesne profits.

4. This Court has consistently taken a view that the court commissioner should not be appointed at a premature stage and such appointment can be made after 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) *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. The learned Advocates for the respective sides submit that pleadings in the suit are completed practically 10 months ago. There is no application for temporary injunction. The parties can cooperate and have the suit expedited.

6. In view of the above, this petition is allowed. The impugned order appointing of a court commissioner dated 26/06/2019 is quashed and set aside and application Exhibit 9 stands rejected.

7. Since the learned Advocates submit that the matter is now posted on 23/08/2019 before the Trial Court, the said Court would endeavour to frame issues expeditiously. The parties are at liberty to suggest draft issues to the Court and thereafter, the Court shall decide the said suit expeditiously.

8. Needless to state, after the recording of oral evidence is concluded, if any litigating side files an application for 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.

(RAVINDRA V. GHUGE, J.)

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