

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9254 OF 2019

Angad Sudhakar Ghuge & Ors.

...Petitioners

Versus

Ramesh Ramrao Ghuge

...Respondent

.....

Mr. B.R.Kedar, Advocate for the Petitioners.

Mr. J.R.Patil, Advocate for the Respondent No. 1.

.....

CORAM : RAVINDRA V. GHUGE, J.

DATE : 30-07-2019.

PER COURT :

01. The petitioners, who are original defendants, are aggrieved by the Order dated 6.7.2019 passed by the Trial Court by which application Exh.33 filed by the plaintiff in R.C.S. No.69/2016, seeking appointment of the TILR as a Court Commissioner, has been allowed.

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

03. The learned Advocate for the respondent-plaintiff has strenuously opposed this petition and prays

that the petition be dismissed with heavy cost. He submits that the suit is only for locating a *nala* and its path in land block No. 80. The Court Commissioner would assist in the correct location of the *nala*. No harm or prejudice would be caused to the petitioners.

04. It is settled law that a Court Commissioner can not be appointed for collecting evidence. The prayer made by the plaintiff was that land gut No. 80 in village Shirnar, Tq. Chakur, be measured and it be located as to whether the *nala* passes through the said land. The Trial Court has allowed the said application, without noticing that such a prayer has the trappings of collection of evidence.

05. So also, the recording of oral evidence is yet to commence. Application Exh. 5 under Order 39 Rules 1 and 2 of the Code of Civil Procedure is also pending. This Court has consistently held that a Court Commissioner can not be appointed until the recording of oral evidence is completed. 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) ALLMR 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.

06. In view of the above this petition is allowed. The impugned Order dated 6.7.2019 is quashed and set aside and application Exh. 33 stands rejected.

07. It be noted that after the recording of oral evidence is concluded, if any application for appointment of a Court Commissioner is filed by any litigant in the proceedings, the Trial Court would consider the same on its own merit and without being influenced by the

observations set out in the impugned Order, which has now been quashed and set aside.

[RAVINDRA V. GHUGE]

JUDGE

Dahibhate/-