

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.10030 OF 2019

Kisan s/o Vishwanath Gerange

Petitioner

Versus

Machindra s/o Vishwanath Gerange
and others

Respondents

Mr.D.R.Adhav, advocate for the petitioner.

CORAM : RAVINDRA V. GHUGE, J.

DATE : 13th August, 2019

PER COURT:

1 The petitioner, original plaintiff, is aggrieved by the order dated 11.06.2019 passed by the trial Court rejecting the application Exhibit-23, filed by the plaintiff seeking appointment of the Deputy Superintendent of Land Records as a Court Commissioner in RCS No.320 of 2018, before commencing the recording of the oral evidence.

2 The record reveals that the suit has been filed purely for seeking appointment of the Deputy Superintendent of Land Records as a Court Commissioner and in the event any encroachment is noticed, the possession of the encroached property be delivered to the plaintiff. When this is the final prayer,

I do not find that the application Exhibit-23 can be said to have filed at an appropriate stage.

3 This Court has consistently held that an application for appointment of Court Commissioner can be entertained after the recording of oral evidence has concluded. Some of such 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 and 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.

3 In view of the above and for the reasons set out above, this petition is dismissed. The impugned order cannot be termed as being perverse or erroneous. However, in the event any

litigating side moves an application for seeking an appointment of a Court Commissioner after the recording of oral evidence has concluded, the trial Court would consider the same on its own merits, provided this does not amount to granting final relief before a decision in the suit.

RAVINDRA V. GHUGE
JUDGE

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