

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

WRIT PETITION NO. 10124 OF 2018

**KAILASH VISWAS SHINDE AND ANOTHER
VERSUS
SANJAY VISWASRAO SHINDE AND OTHERS**

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Advocate for the Petitioners : Shri Datta A. Madake
Advocate for Respondent No.1 : Shri Pramod N. Muley

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 16th SEPTEMBER, 2019.

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PER COURT :

1. This matter pertains to the assignment of another learned Court. Since the learned Advocate for the petitioners expressed grave urgency at 10.30 a.m., this matter was taken on the production board as the said assignment is presently assigned to this Court.

2. The petitioners are defendant Nos. 2 and 14 in Regular Civil Suit No. 659/2015, who are aggrieved by the order dated 19/07/2018, vide which, their application Exhibit 64 has been rejected. The request to seek appointment of a court commissioner even before the issues are cast in the suit, has

been refused.

3. The learned Advocate for the respondents has opposed the petition and submits that the petition deserves to be rejected with costs.

4. This Court has consistently held that a court commissioner is to be appointed after the recording of oral evidence is concluded, in the event the Trial Court finds that further information or assistance beyond the oral and documentary evidence recorded, is required. 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. In view of the above, this petition, being devoid of merit is, therefore, dismissed. However, it shall be noted that after the recording of oral evidence is concluded in the suit, if any of the litigating sides moves an application for seeking appointment of a court commissioner, the Trial Court would consider the said application on its own merits and without

being influenced by its observations set out in the impugned order below Exhibit 64.

(RAVINDRA V. GHUGE, J.)

shp/-