

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.12145 OF 2015

NAMDEV RATAN MORI AND ANOTHER
VERSUS
PIRAJI YADAV PATIL AND OTHERS

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Advocate for Petitioners : Shri Wani Girish V.

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CORAM : RAVINDRA V. GHUGE, J.

Dated: July 30, 2019

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PER COURT :-

1. The petitioners / plaintiffs are aggrieved by the order dated 29.7.2015, passed by the trial Court, by which, application Exhibit 66 filed by the petitioners seeking appointment of a Court Commissioner in RCS No.63 of 2009, has been rejected.

2. Learned Advocate for the petitioners has strenuously criticized the impugned order. He submits that recording of oral evidence is in progress. He draws my attention to the nine grounds formulated in the memo of the petition. Contention is that if the lands of the litigating sides are measured, the controversy between the parties would be reduced to a considerable extent.

3. It appears from the impugned order that the trial Court has

noticed that there is no dispute as regards the area of the agricultural fields of the litigating sides. Issue in the suit is with regard to a wrong mutation entry.

4. This Court has consistently held that a Court Commissioner can be appointed after the recording of oral evidence is concluded.

Some of the orders passed by this Court are as under:-

(1) Syed Mushtaque Ahmad Syed Ismail and others Vs. Syed Ashique Ali Khan Hatdar [2011 (6) Mh.L.J. 334 = 212 (2) Bom. C.R. 790],

(2) Nalubai Shinde and others Vs. Gopinath Shinde [2011(2) Mh.L.J.991],

(3) Dnyandeo Vithal Salke and others vs. Dagdu Kadar Inamdar, 2017 (3) Mh.L.J. 314.

(4) Chandrakant Kashinath Dike and others vs. Smt.Satyabhama Vishwanath Dike and another, Writ Petition No.8877/2013 (Aurangabad Bench) decided on 17.01.2014,

(5) Dhondiba Bapu Zaware vs. Santosh Paraji Zaware and others, Writ Petition No.4756/2014 (Aurangabad Bench) decided on 08.12.2014 and

(6) Kalyan Santram Kawade and others Vs. Khanderao @ Khandu Ganpati Kawade - Writ Petition No.3600 of 2014, dated 20.8.2014.

5. In view of the above, this petition is disposed off. Needless to state, after the recording of oral evidence, 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 impugned order passed below Exhibit 66.

(RAVINDRA V. GHUGE, J.)

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