

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

WRIT PETITION NO. 12073 OF 2019

**SUDAM SHIVAJIRAO JADHAV AND ANOTHER
VERSUS
DNYANDEV ALIAS DNYANOBA NILKANTH PAWAR**

...
Advocate for the Petitioners : Shri G. D. Kale

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 04th OCTOBER, 2019.

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PER COURT :

1. The petitioners are the original plaintiffs in Regular Civil Suit No. 603/2017, who are aggrieved by the order dated 29/04/2019, by which, application Exhibit 17 seeking appointment of a court commissioner has been rejected.

2. The learned Advocate for the petitioners has strenuously criticized the impugned order. Reliance is placed on the six grounds formulated in the memo of the petition. It is conceded that the suit is at a primary stage and issues have still not been framed.

3. The learned Advocate submits that the suit is for

recovery of possession and future mense profit. Boundaries appear to be disputed. It is, therefore, submitted that a court commissioner can be appointed by placing reliance upon the judgment delivered by this Court in the matter of *Kolhapuri Bandu Lakade Vs. Yallapa Chinappa Lakade - 2011 (3) Mh.L.J. 348*.

4. This Court has settled the law that a court commissioner can be appointed after the recording of oral evidence is concluded and if the Trial Court finds it necessary to take the assistance of a court commissioner to elicit additional information. 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, I do not find that the impugned order passed by the Trial Court could be branded as being perverse or erroneous. This petition is, therefore, dismissed.

6. It may be noted that, after the recording of oral evidence

in the suit is concluded, if any litigant files an application seeking appointment of a court commissioner, the Trial Court would consider the same on its own merits.

(RAVINDRA V. GHUGE, J.)

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