

IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD

WRIT PETITION NO. 10721 OF 2018

PRAKASH NAMDEO PATIL  
VERSUS  
SAKHARAM DEVCHAND PATIL AND OTHERS

Advocate for Petitioner : Mr. N.S. Shah.  
Advocate for Respondent No. 1 : Mr. U.S. Patil.

CORAM : RAVINDRA V. GHUGE, J.  
Dated : 26.03.2019

PER COURT :

1. I have heard the learned advocates for the respective sides. Shri Patil, learned advocate appearing on behalf of respondent No. 1 has strenuously opposed this petition and prays that heavy costs may be granted.

2. Despite service of Court notice, none appears for respondent Nos. 2 and 3.

3. On 26.09.2018, I had considered the submissions of the learned advocate for the petitioner and had passed the following order :

*“1. The petitioner/original defendant No. 2 is aggrieved by the order dated 21/07/2018, passed by the learned Trial Court, by which, application Exhibit 31 has been allowed and a court commissioner has been appointed even when*

*the recording of evidence in RCS No. 194/2015 has not commenced.*

*2. Reliance is placed upon the judgments/orders passed by this Court in the matters of :-*

*1. Gangaram Baban Tagad and others Vs. Sarubai Yashwant Tagad and others (WP No.6700/2011 dated 12/06/2013)*

*2. Shantabai Pralhad Anantwad Vs. Tahsildar, Tahsil Office Latur and others (WP No.1096/2018 dated 31/01/2018)*

*3. 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.*

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

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

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

*3. Contention is that the court commissioner cannot be appointed until the recording of oral evidence has concluded in view of the above cited orders/judgments.*

*4. Issue notice to the respondents, returnable on 21/11/2018.*

5. *Until then, the impugned order dated 21/07/2018 shall stand stayed. In the event the impugned order is already implemented and if the court commissioner's report is not disclosed to the litigating sides, the Trial Court shall preserve the report of the court commissioner in a sealed envelope and shall not disclose the same to the litigating sides.*

6. *Copies of the petition paper book for issuance of notices shall be supplied on or before 08/10/2018, failing which, this ad-interim protection shall stand vacated without reference to the Court on 09/10/2018."*

4. In view of the law as above, this petition is allowed. The impugned order dated 21.07.2018, is quashed and set aside. Application Exhibit 31 stands rejected.

5. It is made clear that after the recording of oral evidence is concluded in RCS No. 194/2015, if any of the litigating sides moves an application for seeking appointment of a Court Commissioner, the Trial Court would consider the same on its own merits.

( RAVINDRA V. GHUGE, J. )