

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5780 OF 2019

Sakhahari Dagdu Ghule & Ors.

...Petitioners

Versus

President, Swarajya Shikshan Sanstha,
Aurangabad

...Respondent

.....
Mr. V.B.Garud, Advocate for the Petitioners.
.....

CORAM : **RAVINDRA V. GHUGE, J.**

DATE : **16-07-2019.**

PER COURT :

01. The petitioner-original defendants are aggrieved by the Order dated 23.8.2018 passed by the Trial Court vide which the application Exh. 23 filed by the petitioners seeking appointment of a Court Commissioner in R.C.S. No. 29/2018, has been rejected. Contention is that the application has been rejected without considering its merits.

02. The learned Advocate has strenuously criticized the impugned Order. He draws my attention to the grounds framed in the memo of the petition. It is contended that the Trial Court has mechanically rejected the application

without considering the merits of the averments. It is contended that the suit is relatively fresh having been lodged in 2018. The issues are yet to be cast. Recording of oral evidence is yet to conclude. The petitioners have filed a counter claim.

03. I have perused the petition-paper book with the assistance of the learned Advocate. A vague request is putforth in the application for seeking appointment of a Court Commissioner at Exh. 23. Though the said application is quite lengthy running into 6 pages and the say of the plaintiff being equally long running into 18 pages, I find that the petitioners had prayed that the Court Commissioner be appointed to inspect the suit land and submit all the details which it would find in the suit land. I do not find that the Court Commissioner can be appointed for such a purpose and more so when the suit has been filed only for seeking perpetual injunction.

04. This Court has consistently held that a Court Commissioner could be appointed after the recording of oral evidence has concluded. 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) ALLMR 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.

05. In view of the above and keeping in mind the vague reasons cited by the petitioner for seeking appointment of a Court Commissioner, I do not find that the impugned Order could be branded as being perverse or erroneous. This petition being devoid of merit is, therefore, dismissed. Needless to state, after the recording of oral evidence has concluded, in the event any litigant files an application for seeking appointment of a Court Commissioner, the Trial Court would consider the

said application on its own merits without being influenced by the observations appearing in the impugned Order.

[RAVINDRA V. GHUGE]

JUDGE

Dahibhate/-