

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

18 WRIT PETITION NO.11074 OF 2019

KADUBA KESHAVRAO AVHAD AND OTHERS
VERSUS
YOGESH RAMHARI SHINDE AND OTHERS

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Advocate for Petitioners : Mr. R. K. Jadhavar

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 9th SEPTEMBER, 2019.

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PER COURT :

1. The petitioners-original plaintiffs in RCS No. 7 of 2016, are aggrieved by the order of the trial court dated 07.01.2019 rejecting application Exhibit-23 filed by the plaintiffs seeking appointment of the DSLR as a Court Commissioner.
2. I have considered the strenuous submissions of the learned advocate for the petitioners and have gone through the various grounds formulated in the memo of the petition. There is no dispute that the issues in the suit are yet to be formulated.
3. This Court has consistently held that a Court Commissioner can be appointed only after the recording of oral evidence is

concluded and that too if the trial court is of the view that such a Court Commissioner can render assistance or further elucidate information which would assist the trial court. 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.

(6) Dipak Laxman Gadekar and anr. Vs. Trimbak Ravji Shirsath, Writ Petition No. 11593/2015 (Aurangabad Bench), decided on 23/08/2017,

(7) Mahadeo s/o Vaijanath Bembalge Vs. Chandrakala w/o Ramesh Athane, Writ Petition No. 832/2018 (Aurangabad Bench), decided on 04/06/2018,

(8) Dhondiram Nivrutti Pawar through L.Rs. Vs. Laxman Khashaba Pawar and others, Writ Petition No. 1196/2017, (Bombay Bench), decided on 23/01/2018,

(9) Sanjay Balasaheb Khandare Vs. Vivek Surinder Mahajan and another, Writ Petition No. 4958/2018,

(Aurangabad Bench), decided on 29/01/2018.

(10) Bhika Mahadu Katkar and another Vs. Arjun Bhimraj Ghode, WP No.1890/2019 (Aurangabad Bench) decided on 09/07/2019.

(11) Sitaram Suklal Patil and another Vs. Vasudeo Suklal Patil, WP No.9626/2016 (Aurangabad Bench), decided on 31/07/2017.

4. The trial court has concluded in the impugned order that a Court Commissioner can be appointed to elucidate information that would assist the Court. Ownership over the suit land cannot be proved through a Court Commissioner.

5. I therefore do not find that the impugned order could be termed as being perverse or erroneous. This petition being devoid of merit, is therefore dismissed. It shall however be noted that after the recording of the oral evidence is concluded, if any litigating side files 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 any observations set out in the impugned order dated 07.01.2019.

(RAVINDRA V. GHUGE, J.)