

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

WRIT PETITION NO.11096 OF 2019

**PRAVIN DATTATRAYA KHASIRE AND ANOTHER
VERSUS
PRAMOD DATTATRAYA KHSIRE**

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Advocate for the Petitioners : Ms.Anagha Pedgaonkar
Advocate for the Respondent - sole : Shri A. S. Savale

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 9th SEPTEMBER, 2019.

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PER COURT :

1. The petitioner / original plaintiff in Special Civil Suit No. 85/2018 (old No. 281/2001), is aggrieved by the order dated 03/08/2019 passed by the learned 5th Joint Civil Judge Senior Division, Dhule, by which, application Exhibit 120 filed by the plaintiffs seeking appointment of a court commissioner, has been rejected.

2. I have considered the strenuous submissions of the learned Advocates for the petitioners and on behalf of the sole respondent. The learned Advocate on behalf of the respondent has strenuously supported the impugned order and has

canvassed that this Court has consistently taken a view that a court commissioner should not be appointed until the recording of oral evidence is over and until the Court is convinced that some more information can be elucidated through a court commissioner.

3. He relies upon the following orders/judgments passed by this Court :-

(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.

4. The record reveals that the suit of 2001 was initially decreed. In the second appeal the suit was restored and remitted to the Trial Court. Thereafter it was transferred to the Civil Judge Senior Division on account of the pecuniary jurisdiction. The plaint underwent an amendment and further evidence is now being recorded before the Trial Court. It is thus obvious that the recording of oral evidence is yet to be concluded.

5. Another grievance voiced by the plaintiff is that the Trial

Court has concluded that no relief of recovery of possession is made by the plaintiff, contrary to a specific prayer having been set out in the plaint.

6. Considering the above, this petition is disposed off with liberty to either of the litigating sides to file an application for seeking an appointment of a court commissioner, if so advised, after the recording of oral evidence has concluded in the suit. The Trial Court would then decide such an application on its own merits and by considering the case law cited without being influenced by the observations set out in the impugned order dated 03/08/2019 which is sustained only on technical grounds that the court commissioner should not be appointed until the recording of oral evidence is concluded. The Trial Court would also take note of the specific prayer made by the plaintiff regarding recovery of possession.

(RAVINDRA V. GHUGE, J.)

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