

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

WRIT PETITION NO. 11396 OF 2019

**MADHAV TUKARAM JADHAV
VERSUS
KUNDLIK KISAN NAVALE AND OTHERS**

...
Advocate for the Petitioner : Shri S. S. Londhe

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 18th SEPTEMBER, 2019.

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PER COURT :

1. The petitioner / original plaintiff in Regular Civil Suit No. 95/2016 is aggrieved by the order dated 25/06/2019 passed by the Trial Court, by which, his application Exhibit 33 seeking appointment of a court commissioner has been rejected.

2. I have considered the submissions of the learned Advocate for the petitioner and have gone through the 11 grounds formulated in the memo of the petition.

3. In Exhibit 33, the petitioner has prayed that a court commissioner be appointed, the truth in the pleadings of the parties may be tested, the suit property be measured and a

report be submitted.

4. This Court has consistently held that a court commissioner could be appointed after the recording of oral evidence is over. Some of such 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. The final relief sought by the petitioner in the suit is a declaration of ownership and a direction to carry out the measurement of the properties, fixing of the boundaries and a map may be produced before the Court.

6. In view of the above, this petition stands dismissed.

7. It be noted that after the recording of oral evidence is concluded, any of the litigating sides would be at liberty to file an application for seeking appointment of a court commissioner and the Trial Court would consider the said application on its own merits and without being influenced by the impugned order dated 25/06/2019.

(RAVINDRA V. GHUGE, J.)

shp/-