

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.11806 OF 2019

BAPU RANGNATH DAREKAR AND OTHERS
VERSUS
DASHRATH RAU DAREKAR

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Advocate for Petitioners : Shri Khedkar Prashant N.

Advocate for Respondents : Shri Narwade V.P.

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CORAM : RAVINDRA V. GHUGE, J.

Dated: September 25, 2019

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PER COURT :-

1. The petitioners / defendants are aggrieved by the impugned order dated 1.8.2019, by which, the trial Court has rejected application Exhibit 97 and declined the appointment of a Court Commissioner in RCS No.162 of 2007, after the recording of the oral evidence has been concluded.

2. The learned Advocate for the petitioners has strenuously criticized the impugned order. He has drawn my attention to the seven grounds formulated in the memo. He has taken me through the petition paper book and has submitted that the impugned order is perverse and erroneous.

3. The learned Advocate appearing on behalf of the sole respondent / plaintiff has vehemently opposed this petition. He submits that none of the arguments and grounds canvassed by the petitioners can be sustained in law. Exhibit 97 would indicate that the defendants desire to collect evidence and have stated that their houses, the cattle, the cattle shed, the trees comprising of mango, coconut, custard apple and several such fruit bearing trees, the direction of the road, etc. is to be examined and mentioned in the report.

4. In my view, this amounts to collecting evidence and this is not permitted by the law laid down by this Court in Sanjay Namdeo Khandare Vs. Sahebrao Kachru Khandare and others [2001 (1) Bom. C.R. 800], Kolhapuri Bandu Lakade Vs. Yallappa Chinappa Lakade [2011 (3) Bom.C.R.807], and Bento Antonio Gomes @ Antonio Bento Gomes Vs. Rosario Salvador Carneiro and others [2014 (4) Mh.L.J. 360]. I have found from the pleadings in Exhibit 97 as well as prayer clause that the petitioners apparently are indulging in collecting evidence through the Court Commissioner. A Court Commissioner cannot be appointed for such purposes in view of settled law. I, therefore, do not find that the trial Court has

committed any error in rejecting Exhibit 98.

5. This petition, being devoid of merits is, therefore, dismissed.

(RAVINDRA V. GHUGE, J.)

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akl/d