

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

WRIT PETITION NO. 3742 OF 2019

**RAJENDRA ALIAS RAJKUMAR NAMDEO KUTE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

...
Advocate for the Petitioner : Shri A. B. Kale
AGP for Respondent Nos.1 and 2 : Shri N. T. Bhagat

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 31st JULY, 2019.

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PER COURT :

1. The petitioner/original plaintiff is aggrieved by the order dated 19/07/2018 passed by the Trial Court, vide which, his application Exhibit 100 seeking appointment of a court commissioner in Regular Civil Suit No. 214/2012, has been rejected.

2. The learned Advocate for the petitioner has strenuously criticized the impugned order. He submits that the court commissioner's assistance is sought only for carrying out measurement of the property. It would assist the Trial Court in the proper adjudication of the suit. He submits that recording of oral evidence has not concluded in the suit.

3. This Court has consistently held that the court commissioner should be appointed after the recording of oral evidence has been completed. 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) 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. An application Exhibit 71 for appointment of a court commissioner was earlier filed and the same was allowed by order dated 17/01/2017.

5. In view of the above, this petition is dismissed. It, however, be noted that after the recording of oral evidence is completed, if an application for appointment of a court commissioner is filed by any litigant, the Trial Court would consider the said application on its own merits and shall not be influenced by any observations appearing in the impugned order below Exhibit 100 or any such similar order.

(RAVINDRA V. GHUGE, J.)

shp/-