

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

WRIT PETITION NO. 4003 OF 2019

YASHWANT GAJANAN SHINGAR
VERSUS
PRABHAKAR BHAURAO WALTE AND OTHERS

...
Advocate for the Petitioner : Shri M. R. Malpani h/f.
Shri A. B. Kale

...
CORAM : RAVINDRA V. GHUGE, J.

DATED : 17th DECEMBER, 2019

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PER COURT :

1. The Petitioner / original plaintiff in Regular Civil Suit No. 160/2015, is aggrieved by the order dated 10/08/2018, by which, his application Exhibit 28 seeking appointment of a court commissioner, has been rejected.
2. I have considered the strenuous submissions of the learned Advocate for the Petitioner. He has drawn my attention to the 12 grounds formulated in the memo of the petition. He also points out his pleadings from application Exhibit 28.
3. The record reveals that there have been two

measurements earlier. The suit has been preferred by the plaintiff for seeking injunction and removal of encroachment. Application Exhibit 5 seeking temporary injunction is also pending. The Trial Court has concluded that a court commissioner cannot be appointed in such circumstances.

4. This Court has consistently held that a court commissioner can be appointed after the recording of oral evidence is concluded. Some of such orders/judgments are as under :-

(1) *Syed Mushtaque Ahmad Syed Ismail and others Vs. Syed Ashique Ali Khan Hatdar* [2011 (6) Mh.L.J. 334 = 2012 (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.

(12) Sarjerao Nathu Bangar and others Vs. Namdeo Keru Bangar and others, WP No.13441/2019 (Aurangabad Bench), decided on 07/11/2019.

5. The suit is pending from 2015. Exhibit 5 application is still not adjudicated upon.

6. In view of the above, I do not find that the impugned order could be termed as being perverse or erroneous. This petition, being devoid of merit is, therefore, dismissed.

7. Needless to state, after the recording of oral

evidence has concluded, if an application for appointment of a court commissioner is filed by any litigating party, the Trial Court would consider the same on its own merits without being influenced by the impugned order dated 10/08/2018.

(RAVINDRA V. GHUGE, J.)

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