

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

WRIT PETITION NO.13867 OF 2019

SAYYAD HIDAYAT SAYYAD LAL
VERSUS
DHARMAPAL SHANKARAPPA CAHWALE AND OTHERS

...
Advocate for the Petitioner : Shri Barde Parag Vijay

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 18th November, 2019

Per Court:

1 The petitioner/ original plaintiff in RCS No.136/2018 is aggrieved by the order dated 20.08.2019 passed by the Trial Court by which, his application exhibit 40 seeking appointment of a court commissioner, has been rejected.

2 The learned advocate for the petitioner has strenuously criticized the impugned order on the basis of the nine grounds formulated in the memo of the petition.

3 The record indicates that the suit is just one year old. The court commissioner is sought to be appointed for measuring the land and to find out the exact location of the land and the location of the Nala that passes through the land Survey No.6.

4 I am of the view that the court commissioner cannot be

appointed for collecting evidence. Whether, the Nala exists and what is the positioning of the lands of the litigants and whether, the Nala passes through the land Survey No.6, would tantamount to collecting evidence.

5 This Court has consistently held that the court commissioner should not be appointed until the recording of oral evidence is concluded. If any further information is to be elucidated and if the Trial Court finds that the court commissioner would be of assistance, such an appointment can be made keeping in view the evidence recorded. Some of the orders/ judgments delivered by this Court are as under :-

- (a) *Sanjay Namdeo Khandare vs. Sahebrao Kachru Khandare and others, 2001 (2) Mh.L.J. 959.*
- (b) *Kolhapuri Bandu Lakade vs. Yallappa Chinappa Lakade and others, 2011 (3) Mh.L.J. 348.*
- (c) *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.*
- (d) *Gangaram Baban Tagad and others Vs. Sarubai Yashwant Tagad and others (WP No.6700/2011 dated 12/06/2013).*
- (e) *Chandrakant Kashinath Dike and others vs. Smt. Satyabhama Vishwanath Dike and another, Writ Petition No.8877/2013 (Aurangabad Bench) decided on 17.01.2014.*
- (f) *Dhondiba Bapu Zaware vs. Santosh Paraji*

Zaware and others, Writ Petition No.4756/2014 (Aurangabad Bench) decided on 08.12.2014.

- (g) Dnyandeo Vithal Salke and others vs. Dagdu Kadar Inamdar, 2017 (3) Mh.L.J. 314.*
- (h) Dipak Laxman Gadekar and another vs. Trimbak Ravji Shirsath, Writ Petition No.11593/2015 (Aurangabad Bench) decided on 23.08.2017.*
- (i) Dhondiram Nivrutti Pawar through L.Rs. vs. Laxman Khashaba Pawar and others, Writ Petition No.1196/2017 (Principal Seat Bombay) decided on 23.01.2018.*
- (j) Sanjay Balasaheb Khandare vs. Vivek Surinder Mahajan and another, Writ Petition No.4958/208 (Aurangabad Bench) decided on 29.01.2018.*
- (k) Shantabai Pralhad Anantwad Vs. Tahsildar, Tahsil Office Latur and others (WP No.1096/2018 dated 31/01/2018).*
- (l) Mahadeo Vaijanath Bembalge vs. Chandrakala Ramesh Athane, Writ Petition No.832/2018 (Aurangabad Bench) decided on 04.06.2018.*
- (m) Baburao Jairam Borade vs. Fakira Tukaram Lanekar, Writ Petition No.1743/2018 decided on 28.08.2018 (Aurangabad Bench).*
- (n) Sarjerao Nathu Bangar and others vs. Namdeo*

***Keru Bangar and others, Writ Petition
No.13441/2019 decided on 07.11.2019
(Aurangabad Bench).***

6 In view of the above, this Writ Petition being devoid of merit is, therefore, dismissed.

7 Needless to state, after the recording of oral evidence is concluded, if an application for seeking appointment of a court commissioner is preferred by any of the litigating sides, the Trial Court would consider such an application on its own merits and without being influenced by the impugned order.

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(RAVINDRA V. GHUGE, J.)