

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.15294 OF 2019

SHANTARAM KAUTIK ROKDE AND ANOTHER
VERSUS
KISHOR KAUTIK ROKDE AND ANOTHER

Mr.A.B.Kale, Advocate for the petitioners.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 17/12/2019

PER COURT :

1. The petitioners/original defendants in RCS No.175/2014 are aggrieved by the order dated 31/08/2019 passed by the Trial Court by which, application Exh.39 seeking appointment of a Court Commissioner, has been rejected.

2. I have considered the strenuous submissions of Mr.Kale, learned Advocate appearing on behalf of the petitioners and have gone through the 13 grounds formulated in the memo of the petition.

3. This Court has consistently held that the Court Commissioner cannot be appointed for collecting evidence and normally, a Court Commissioner should not be appointed prior to the completion of the

recording of oral evidence. Some of the orders passed by this Court 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.

4. I find from Exh.39 that the petitioners desire the appointment of the Court Commissioner so as to find out as to whether there is a well in the suit property and as regards the location of the well in one of the suit properties. This, in my view, would amount to collection of evidence. The Trial Court has rightly concluded that these petitioners desire to collect evidence with the aid of the Court Commissioner. The impugned order dated 31/08/2019, therefore, does not appear to be perverse or erroneous.

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

6. After the recording of oral evidence, if any litigating sides files an application for seeking appointment of a Court commissioner, the Trial Court would consider the same on its own merits and in the light of the oral and documentary evidence recorded in the proceedings.

(Ravindra V.Ghuge, J.)