

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

WRIT PETITION NO.14870 OF 2019

ROHINI PRAKASH NIKAM
VERSUS
ABHIMAN LAXMAN SHINDE AND OTHERS

...

Advocate for the Petitioner : Shri Gaware Niteen V.

Advocate for Respondent 3 : Shri Gawali Amol K.

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 10th December, 2019

Per Court:

1 The petitioner, original plaintiff in RCS No.302/2017, is aggrieved by the order dated 19.01.2019 passed by the Trial Court by which, the application exhibit 14 seeking the appointment of a court commissioner, has been rejected.

2 The application exhibit 5 has been allowed and the defendants are injuncted.

3 I have heard the learned advocates for the respective sides.

4 I find from exhibit 14 that the plaintiff desires that the court commissioner should find out as to what is the construction on the suit property caused by the defendants, what is the length and width of such construction and whether, such construction amounts to encroachment. It

is apparent, in my view, from the pleadings in exhibit 14, that the plaintiff desires to collect evidence with the aid of the court commissioner and therefore, the length and width of such construction, which is said to be illegal, is sought to be brought before the Court by appointment of the court commissioner. This amounts to collecting of evidence.

5 This Court has consistently held that the court commissioner is meant to assist the Trial Court if it finds that some more information is necessary to be elucidated after recording of oral evidence of the parties has concluded. As such, the court commissioner should not be appointed until the recording of oral evidence is concluded. Following are some of such judgments/ orders passed by this Court :-

- (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, I do not find that the order passed by the Trial Court could be branded as being perverse or erroneous. This Writ Petition, being devoid of merit is, therefore, dismissed.

7 Needless to state, after the recording of oral evidence is concluded in the matter, either of the litigating sides may file an application for seeking appointment of a court commissioner, if so advised. If such an application is filed, the Trial Court would consider the same on its own merits and in the light of the oral evidence recorded, without being influenced by the impugned order dated 19.01.2019.