

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.14551 OF 2019

ASHOK HARDAYAL MEHTA

VERSUS

RAHUL TATYARAM MANDAGE AND OTHERS

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Advocate for Petitioner : Mr. Deepak D. Chaudhari

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CORAM : RAVINDRA V. GHUGE, J.

DATE : 12th December, 2019.

PER COURT :-

1. On 03/12/2019, this Court had passed the following order:-

"1. None for the petitioner.

2. I have perused the impugned order dated 05/08/2019 by which, the Trial Court has rejected application Exhibit-51 filed by the petitioner/original defendant No.6 in Special Civil Suit No.53/2016. The petitioner had sought appointment of a Court Commissioner.

3. This Court has consistently held that the Court Commissioner should not be appointed until the recording of oral evidence is completed. 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 bNo.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. Though this petition appears to be devoid of merits, I am adjourning it for passing orders on dismissal on 12/12/2019. Needless to state, there shall be no ad-interim relief."

2. The learned Advocate for the petitioner has vehemently criticized the impugned order. He draws my attention to the grounds formulated in the memo of the petition and submits that he had put-forth two prayers; one for inspecting the land to find out the possession over the said land, another prayer that the land should be measured, boundaries be fixed and the map be prepared.

3. It is settled law that a Court Commissioner cannot be appointed for tracing out the possession of the litigating parties. This amounts to collection of evidence. So also, considering the orders passed by this Court reproduced above, a Court Commissioner can

be appointed after the recording of oral evidence has concluded.

4. In view of the above, I do not find that the impugned order calls for any interference. This petition being devoid of merits, is therefore, dismissed.

5. Nevertheless, after the recording of oral evidence is concluded in the matter, if an application for appointment of a Court Commissioner is preferred by any litigating side, the Trial Court would consider the said application on it's own merits and without being influenced by the order passed below Exh.51.

(RAVINDRA V. GHUGE, J.)

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