

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.13379 OF 2019

SHAHU BALKRUSHNA JADHAV
VERSUS
PRABHAKAR NARAYAN JADHAV AND OTHERS

Mr.A.C.Darandale, Advocate for the petitioner.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 05/11/2019

PER COURT :

1. The petitioner/plaintiff in RCS No.293/2018 is aggrieved by the order dated 26/04/2019 passed by the Trial Court vide which his application Exh.12, seeking appointment of a Court Commissioner for measuring the area purchased by the plaintiff, has been rejected.
2. The learned Advocate for the petitioner has strenuously criticized the impugned order by relying upon each of his 10 grounds formulated in the memo of the petition. He has also relied upon an order passed by this Court in the matter of Kalyan Santram Kawade and others Vs. Khanderao alias Khandu Ganpati Kawade and others [2015(4) Mh.L.J.429].

3. The learned Advocate for the petitioner submits that if liberty to prefer an application for appointment of a Court Commissioner, after recording of oral evidence, is granted, this petition could be disposed off.

4. Notwithstanding the view taken by me in Kalyan Kawade (supra), this Court has consistently held in the following judgments/orders that a Court Commissioner cannot be appointed until the recording of oral evidence is concluded :-

(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.

Apparently, the above orders were not cited before this Court when the case preferred by Kalyan Kawade (supra) was decided.

5. In view of the request made by the petitioner, this petition is disposed off. Needless to state, after the recording of oral evidence is concluded, if any of the litigating sides moves an application for appointment of a Court Commissioner, the Trial Court would consider the same on its own merits.

(Ravindra V.Ghuge, J.)