

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

939 WRIT PETITION NO.14019 OF 2019

PADMABAI @ KAMLABAI KACHRULAL CHOUDHARI
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioner : Smt. Bhosale Uma S.
AGP for Respondents 1 & 2 : Shri Yadav-Lonikar S.R.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: November 20, 2019
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PER COURT :-

1. The petitioner / plaintiff in RCS No.524 of 2016 is aggrieved by the order dated 30.8.2019, passed by the trial Court, by which, her application seeking appointment of a Court Commissioner, has been rejected.
2. The learned Advocate for the petitioner has canvassed the grounds formulated in the memo of the petition. She has taken me through the pleadings of the plaintiff and the written statement filed by the defendants.
3. I find from the application Exhibit 35 that the petitioner desires that the suit property be measured and the encroached portion be identified.

4. This Court has consistently held in the following orders / judgments that a Court Commissioner can be appointed after the recording of the oral evidence is over:-

(1) *Syed Mushtaque Ahmad Syed Ismail and others Vs. Syed Ashique Ali Khan Hatdar* [2011 (6) Mh.L.J. 334 = 212 (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.

5. It has also been laid down in the case of Sanjay Namdeo Khandare Vs. Sahebrao Kachru Khandare and another [2001 (2) Mh.L.J. 959], that a Court Commissioner cannot be appointed for finding out the exact possession of the parties over the suit property, as it amounts to collecting evidence. It is informed that the recording of oral evidence has not concluded.

6. In view of the above, this petition being devoid of merits is, therefore, dismissed.

7. Nevertheless, after the recording of oral evidence is concluded in the matter, if any litigant files an application for seeking appointment of a Court Commissioner, the trial Court would consider the same on its own merits and without being influenced by the impugned order.

(RAVINDRA V. GHUGE, J.)

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