

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

WRIT PETITION NO.15091 OF 2019

ASHOK SHRIRAM SHINDE AND OTHERS
VERSUS
MUKUND NARAYAN TAT AND OTHERS

...
Advocate for the Petitioners : Shri More P. P.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 16th December, 2019

Per Court:

1 The petitioners, original defendants in RCS No.186/2013, are aggrieved by the order dated 30.09.2019 passed by the Trial Court by which, the application exhibit 69 filed by these petitioners seeking appointment of a court commissioner, has been rejected.

2 Grievance is that exhibit 69 has been rejected since, earlier a similar application exhibit 56 filed by these petitioners seeking appointment of a court commissioner was also rejected.

3 The learned advocate for the petitioners has strenuously criticized the impugned order. He has gone through the pleadings of the plaint and he has read out the prayer clauses set out therein. He has also pointed out the contents of the written statement and the rough sketch map. He submits that the petitioners do not have any intention of

changing the course of the "Nala", much less direct it towards the land Survey No.115 belonging to the plaintiff. He also makes a statement that Survey No.115 is on an elevated position and even assuming that the petitioners desire to change the course of the "Nala" into the land of the plaintiff, it would not be possible.

4 This Court has consistently held that 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).*

5 Considering 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.

6 I find that the suit is of the year 2013. It is informed that the
application exhibit 5 is still pending. Considering that six years have
already passed by, it would be appropriate to direct the Trial Court to
decide exhibit 5 expeditiously and proceed to record evidence in the suit,
which would enter the seventh year in 2020.

7 The Trial Court shall make an endeavour to decide exhibit 5
as expeditiously as possible and in any case, on or before 29.02.2020.

8 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, without being influenced by the earlier orders
passed below exhibits 56 and 69.