

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1186 OF 2019

Narmadabai Mannalal Agrawal

...Petitioner

Versus

Dr. Sayed Abdul Gaffar Abdul Razzak
Kadri

...Respondents

None for the Petitioner.

.....

.....

CORAM : **RAVINDRA V. GHUGE, J.**

DATE : **01-07-2019.**

PER COURT :

01. Despite a pass over granted in the first session, none appears for the petitioner even on the second call. Instead of dismissing the matter in default, I am considering the same on its merits.

02. The petitioner plaintiff has preferred the application Exh. 37 in RCS no. 606/2016 seeking appointment of Court Commissioner. By Order dated 27.8.2018, the application has been rejected.

03. This Court has held in the following Orders that a Court Commissioner can be appointed after the recording

of oral and documentary evidence is concluded :

(a) Syed Mushtaque Ahmad Syed Ismail and others Vs. Syed Ashique Ali Khan Haidar Ali, 2012 (1) ALLMR 80 : 2011 (6) Mh.L.J. 334,

(b) Dnyandeo Vithal Salke & others vs. Dagdu Kadar Inamdar, 2017(3) Mh.L.J. 314,

(c) Chandrakant Kashinath Dike and others vs. Smt. Satyabhama Vishwanath Dike and another, Writ Petition No.8877/2013 (Aurangabad Bench) decided on 17.01.2014,

(d) Dhondiba Bapu Zaware vs. Santosh Paraji Zaware and others, Writ Petition No. 4756/2014 (Aurangabad Bench) decided on 08/12/2014,

(e) Dipak Laxman Gadekar and anr. Vs. Trimbak Ravji Shirsath, Writ Petition No. 11593/2015 (Aurangabad Bench), decided on 23/08/2017,

(f) Mahadeo s/o Vaijanath Bembalge Vs. Chandrakala w/o Ramesh Athane, Writ Petition No. 832/2018 (Aurangabad Bench), decided on 04/06/2018,

(g) Dhondiram Nivrutti Pawar through L.Rs. Vs. Laxman Khashaba Pawar and others, Writ Petition No. 1196/2017, (Bombay Bench), decided on 23/01/2018,

(h) Sanjay Balasaheb Khandare Vs. Vivek Surinder Mahajan and another, Writ Petition No. 4958/2018, (Aurangabad Bench), decided on 29/01/2018.

04. In view of the above, I do not find that the Trial Court has committed any error in concluding that the TILR can not be appointed for inspecting the factum of possession of a litigant over a suit property. So also exhibit 37 has been filed at a pre-mature stage.

05. Considering the above, this petition is dismissed.

06. It be noted that, after the recording of oral evidence has concluded, if any of the litigating side moves the Trial Court for seeking appointment of a Court Commissioner, the Trial Court would consider the same on its own merits without being influenced by the observations set out in the impugned Order dated 27.8.2018.

[RAVINDRA V. GHUGE]

JUDGE

Dahibhate/-