

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2204 OF 2020

KALU NAMA POTKULE
VERSUS
MANGALA GANGARAM POTKULE AND OTHERS

Mr.S.S.Dixit, Advocate for the petitioner.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 17/02/2020

PER COURT :

1. I have heard the learned Advocate for the petitioner and have perused the order passed by this court on 03/02/2020.

2. This Court has consistently held in the following judgments that a Court Commissioner should normally not be appointed until the recording of 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 Babu 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 Rayji 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.

3. The learned Advocate frankly submits that in his suit RCS No.93/2014, his evidence is concluded and in RCS No.171/2013 filed by respondent Nos.1,4 and 5, their oral evidence as plaintiffs is recorded.

4. In view of the above, the learned Advocate for the petitioner

submits that if the petitioner withdraws this petition, liberty may be granted to apply for appointment of a Court Commissioner after the recording of oral evidence in each of the cases has concluded.

5. In view of the above, this petition is disposed off with liberty to all the litigating parties to apply for the appointment of a Court Commissioner after the recording of oral evidence in both the suits has concluded and such an application would then be considered on its own merits.

(Ravindra V.Ghuge, J.)