

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

WRIT PETITION NO.8998 OF 2019

SHAHAJI BHIWA KOKATE AND OTHERS  
VERSUS  
GENU TULSHIRAM TANPURE AND OTHERS

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Advocate for Petitioners : Mr.Garud N.C.  
Advocate for Respondents 1-3 : Mr. Sonwane Mahesh R.

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CORAM : V.K. JADHAV, J.  
Dated: January 07, 2020

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**PER COURT :-**

1. Heard both sides.
2. This Court has consistently held in the following cases that the Court Commissioner normally should not 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 = 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.

3. In view of the same, this writ petition can be disposed off by setting aside the impugned order passed by the trial court with a liberty to the respondents/original plaintiffs, who has instituted the suit for recovery of the encroached portion to file an application for appointment of the Court Commissioner after completion of the recording of the oral evidence of the plaintiffs. Hence, order.

aaa/-

**ORDER**

1. Writ petition is hereby partly allowed.
2. The impugned order dated 4.4.2019 passed by the 10<sup>th</sup> Jt. Civil Judge S.D., Ahmednagar below exh.35 in RCS No.262 of 2017 is hereby quashed and set aside.
3. The respondents/original plaintiffs are at liberty to file an application for appointment of the Court Commissioner after recording of their oral evidence.
4. Writ Petition accordingly disposed off.

**( V.K. JADHAV, J. )**

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