

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 269 OF 2020

(Pushpa Gajanan Kohale and anr..vs.. Shashikant Datatray Panditrao)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.*

Court's or Judge's orders.

Shri V.N. Morande, Advocate for petitioners.

CORAM: RAVINDRA V. GHUGE, J.

DATE: 15th JANUARY, 2020.

1. The petitioners original defendants in Regular Civil Suit 51 of 2017, are aggrieved by the order dated 29.11.2018, by which application Exh. 33 seeking appointment of the City Survey Officer as a Court Commissioner for the joint measurement of the properties of the litigating sides, has been rejected. This petition has been filed on 18.12.2019.

2. I have considered the strenuous submissions of the learned Advocate for the petitioners. With his assistance, I have gone through the petition paper book.

3. The contention of the petitioners is correct in relation to the unsustainable conclusion drawn by the trial Court that the joint measurement of the properties of the litigating sides, would amount to collecting evidence. It is settled law that the joint measurement of the properties of the litigating sides does not amount to collecting evidence,

if such measurement is aimed at purely fixing the boundaries and preparing the sketch map.

4. However, the trial Court has recorded that the plaintiff has already got the land measured in 2015 through a TILR and the boundaries have been fixed. Defendant No. 2 was present at the time of the measurement and had not raised any objection. The learned Advocate for the petitioners denies this observation. Nevertheless, this would be a subject matter of the suit and all contentions of the parties will have to be considered by the trial Court while deciding whether there was such a measurement and whether such a measurement need not be ignored or is not reliable.

5. So also, this Court has consistently held in the following judgments / orders that a Court Commissioner cannot be appointed until the oral evidence is concluded and it is in rare cases that such appointment could be granted:

(a) 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.

(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.

6. Admittedly, the recording of oral evidence in the present suit has not concluded.

7. As such, this petition is disposed off without causing an interference in the impugned order. Needless to state, after the recording of oral evidence is concluded, if an application for seeking appointment of a Court Commissioner is filed by any of the litigating sides, the trial Court would consider the said application without being influenced by its earlier order and by considering the oral evidence recorded.

(Ravindra V. Ghuge, J.)