

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.8270 OF 2019**

MHASU VITHOBA GUNJAL AND ANR
VERSUS
BHIKAJI MARUTI SHINDE AND ORS

...

Mr. Amol S. Sawant, Advocate for the Petitioners.

Mr. V. S. Badakh, Advocate for Respondent No.1.

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**CORAM : SANDEEP V. MARNE, J.
DATED : 09th DECEMBER, 2022.**

PER COURT:-

1. By this petition petitioners challenge the order dated 08.04.2019 passed by the Civil Judge, Junior Division, Parner, Dist. Ahmednagar allowing plaintiff's (respondent no.1) application for appointment of Court Commissioner for measurement of land and fixation of boundaries.

2. When this petition came up for admission, this Court stayed the order appointing Court Commissioner by recording following reasons:

"3. This Court has consistently held that a Court Commissioner should not be appointed, before recording of oral evidence is concluded. Some of the orders passed by this Court are as under:

(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. Styabhama 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 Pawwar 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.”*

3. Learned counsel appearing for parties are *ad idem* that by now the evidence of both the parties is adduced. Therefore, reason for which the order appointing Court Commissioner was stayed no longer subsists.

4. Only difficulty that Mr. Sawant expresses that in absence of boundaries of the land of plaintiff being described either in the sale deed or in the plaint, it will be virtually impossible for the Court Commissioner to locate the suit property. However, I have gone through the contents of the plaint as well as written statement. Both the parties have attempted to locate their respective lands in their respective pleadings. They will obviously assist the Court Commissioner in location of their own respective lands.

5. In view of the change circumstances of the evidence of parties being recorded, I am of the view that the order dated 08.04.2019 appointing Court Commissioner can now be given effect.

6. Accordingly, writ petition is dismissed without any orders as to cost. The order dated 08.04.2019 passed by the Trial Court shall be implemented within a period of four weeks from today.

(SANDEEP V. MARNE)
JUDGE

Devendra/December-2022