

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.14465 OF 2019

BABA BAYAJI SHINDE AND OTHERS
VERSUS
MOHAN MARUTI SHINDE AND ANOTHER

...

Advocate for Petitioners : Mr. Shaikh Shoyab
Advocate for Respondents No. 1 and 2: Mr. D.M. Mane h/f. Mr.
Nagesh Talekar

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 3rd AUGUST, 2022

ORDER :

1. The petitioners have challenged the order passed by 2nd Joint Civil Judge, Junior Division, Paranda, below Exhibit-74 in Regular Civil Suit No. 243/2014, thereby allowing the application filed by the plaintiff for appointment of court commissioner under Order XXVI Rule 9.

2. The ground of challenge is that the court commissioner can be appointed after completion of recording of evidence. In support his submission, the learned advocate for the petitioners placed reliance on the decisions of this Court in Asaram Khushalrao Taur and Others Vs. Manish Pralhadrao Taur and Others (Writ Petition No. 14988/2019), Baba Bayaji Shinde

and others Vs. Mohan Maruti Shinde & Others (Writ Petition No. 14465/2019) and Syed Mushtaque Ahmad S/o Syed Ismail & Others Vs. Syed Ashique Ali Khan S/o Haidar Ali & Ors. (Writ Petition No. 2071/2011).

3. The learned advocate for the respondents supports the impugned order by relying on Dipak Laxman Gadekar & Anr. Vs. Trimbak Ravji Shirsath (Writ Petition No. 11593 of 2015) and Dhondiba Babu Zaware Vs. Santosh Paraji Zaware & Others (Writ Petition No 4756 of 2014).

4. Admittedly, in the present case appointment of court commissioner, at earlier point of time was subject matter of challenge in Writ Petition No. 10531/2014. This Court by order dated 16.12.2014 disposed of the writ petition by granting liberty to the petitioner as well as respondents to prefer application for appointment of court commissioner, after recording of evidence has commenced, and further directed the Trial Court to decide it on merit. Application Exhibit-74 is filed by the respondents/plaintiffs after they have commenced adducing evidence.

5. In the decisions relied upon by the learned advocate for the petitioners, this Court has held that the court commissioner should not be appointed until recording of oral evidence is concluded. On the other hand in the decisions relied upon by the learned advocate for the respondents, this Court in the facts of those cases granted liberty to apply for appointment of court commissioner after recording of evidence has commenced with a direction to the Trial Court to decide such application on its own merits.

6. While allowing the application for appointment of court commissioner the Trial Court has held that in the present suit, dispute between the parties is in respect of situation of properties and boundaries, the appointment of court commissioner therefore would assist the Trial Court to effectively adjudicate the dispute between the parties. In that view of the matter, this Court is not inclined to interfere in the order passed by the Trial Court, thereby appointing court commissioner.

7. In the light of consistent view taken by this Court that the court commissioner should not be appointed until recording of oral evidence is concluded, appointment of court

commissioner in the suit shall be made after recording of oral evidence is concluded. With these observations, writ petition is dismissed.

[NITIN B. SURYAWANSHI, J.]