

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION (STAMP) NO.379 OF 2015

Dr. Anil Ambadas Bhosale and another

.. Petitioners

Versus

Rajkumar Bhausahab Bhosale

.. Respondent

Shri. Anand S. Kulkarni, for the Petitioners.

CORAM : R.M. SAVANT, J.

DATE : 09th MARCH, 2015

PC.

1. The Writ Jurisdiction of this Court is invoked against the order dated 07.11.2014 passed by the Learned 5th Joint Civil Judge, Junior Division, Solapur, by which order the application Exh.69 filed by the Defendant i.e. Respondent herein for appointment of the Court Commissioner came to be allowed and the mandate as contained in clauses 1 to 8 of the operative part of the impugned order came to be issued to the Court Commissioner.

2. The suit in question being Regular Civil Suit No.284 of 2011 has been filed by the Petitioners/original Plaintiffs for an injunction for restraining the Defendant from interfering with their possession. The Plaintiffs claim to have purchased two plots of land in the society in

question. The stand taken by the Defendant is that the plots of lands which are purchased by the Plaintiffs have been used for the purposes of constructing a road which is 18 ft. wide and 800 meters in length. It appears that the Official from the Town Planning Department of the Solapur Municipal Corporation was examined on behalf of the Defendant in the suit. However, the evidence of the said witness does not throw any light as regards the case that is put up by the Defendant in the suit. It seems that the suit proceeded to trial and was at the stage of the arguments of the parties being heard, at which stage the application Exh.69 came to be filed for appointment of the Court Commissioner by having recourse to Order 26 Rule 9 of the CPC. The Trial Court having regard to the controversy as to whether the road has been constructed on the plot of land of the Plaintiffs and whether after the construction of the road any open land is left, deemed it appropriate to appoint the Court Commissioner. In my view, having regard to the well settled principles applicable to Order 26 Rule 9, the order passed by the Trial Court appointing the Court Commissioner for the reasons mentioned therein are unexceptional and do not merit any interference at the hands of this Court in its Writ Jurisdiction. The Writ Petition is accordingly dismissed.

[R.M. SAVANT, J]