

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

WRIT PETITION (STAMP) NO.30161 OF 2014

Dayanand Arvind Ambal and another

.. Petitioners

Versus

Ningappa Siddhappa Bhuyar

.. Respondent

Mr. Prasad B. Kulkarni i/b Mr. Priyal G. Sarda, for the Petitioners.

CORAM : R.M. SAVANT, J.

DATE : 23rd JANUARY, 2015

PC.

1. The order dated 19.08.2014 passed by the Learned Civil Judge, Senior Division, Solapur rejecting the application for appointment of the Court Commissioner is taken exception to by way of the above Petition.

2. The Petitioners are the original Defendants. In the suit filed by the Respondent No.1 for recovery of the balance amount of Rs.5,36,082/- from the Defendants to whom the Plaintiff sold the property in question vide registered Sale Deed dated 10.01.2012. It is the case of the Plaintiff that the balance consideration has not been paid by him in view of the fact that the area which has been actually conveyed to the Plaintiff is less by 800 sq.ft. than recorded in the Sale Deed. The Defendant therefore sought appointment of the Court Commissioner. The Trial Court has rejected the

said application as the suit is at the stage where the evidence of the parties is being recorded. The Trial Court adverted to the cross-examination of the Defendant wherein he has stated that after sale transaction, he himself measured the suit land. He has further admitted in his cross-examination that while obtaining construction permission the area as shown in the 7/12 extract of the suit property was mentioned. He has admitted that he has made construction over the suit property and sold some flats from it. The Trial Court therefore observed that at no point of time earlier, the Defendant called upon the Plaintiff to comply with the “Hami Karar Partra”. The construction permission which was obtained by the Defendant was placed on record by the Plaintiff as also the sanctioned construction map which showed that the area shown while seeking construction permission is as shown in the 7/12 extract as also in the Sale Deed. In the light of the aforesaid facts that the Trial Court observed that the instant application has been filed for only protracting the trial. In my view, having regard to the well settled principles which are applicable to the consideration of an application under Order 26 Rule 9 of the CPC, the order passed by the Trial Court does not warrant any interference at the hands of this Court under Article 227 of the Constitution of India. The Writ Petition is accordingly dismissed.

[R.M. SAVANT, J]