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IN THE HIGH COURT OF JUDICATURE AT MUMBAI

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6096 OF 2015

Mahendra Pinjumaal Jajusa and another ... Petitioners

Vs.

Lakshman Valiram Hinduja ... Respondent

Mr.Surel S.Shah, Advocate for Petitioners.

CORAM : R. G. KETKAR, J.

DATE : 02nd JULY, 2015

P.C. :

. Not on board. At the request of Mr.Surel S. Shah, taken up in the Production Board.

2. Heard Mr.Surel S.Shah, learned Counsel for the petitioners at length.

3. By this petition under Article 227 of the Constitution of India, petitioners – original defendants have challenged the judgment and order dated 09/09/2014 passed by the learned 13th Joint Civil Judge, Junior Division, Kolhapur below Exhibit 63 in Regular Civil Suit No. 28 of 2012. By that order, the learned trial Judge rejected the application made by the petitioners under Order 26 Rule 9 of Code of Civil Procedure, 1908, for appointment of the Court Commissioner. The learned trial Judge has observed in paragraph 10 that the application is made for carrying out

measurement of the area of construction carried out by the plaintiff in Gat No. 189/5/1 which is in no way connected with the subject matter of the suit. In view thereof, the learned trial Judge rejected the application. I do not find that the learned trial Judge has committed any error in passing the impugned order. The learned trial Judge has further recorded in paragraph 11 that application is not in relation with the subject matter of the suit and therefore, inspection is not necessary for the determination of the controversy before the Court. Hence, Petition fails and the same is dismissed. It is, however, expressly made clear that where a decree is appealed from by the petitioner, any error, defect or irregularity in the impugned order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal as contemplated by Section 105(1) of C.P.C. Order accordingly.

(R. G. KETKAR, J.)