

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

WRIT PETITION NO.7713 OF 2015

Anandrao Kallojirao Patil

(Deceased through his heirs and LRs)

Smt. Vandana Anandrao Patil and others

.. Petitioners

Versus

Kedari Yellappa Patil

.. Respondent

Mr. G. N. Salunke i/by Mr. Vijay Kokitkar, for the Petitioners.

Mr. A. B. Desai, for the Respondent.

CORAM : R.M. SAVANT, J.

DATE : 20th AUGUST, 2015

PC.

1. The order dated 04.03.2015 passed by the Learned District Judge-1, Gadhinglaj, District Kolhapur, rejecting the application for appointment of Court Commissioner filed at the appellate stage is taken exception to by way of the above Petition. The Petitioners herein are the Appellants who have filed the Appeal being Regular Civil Appeal No.10 of 2008 against the decree passed in Regular Civil Suit No.67 of 1993 on 31.12.2007. In the suit, the Court Commissioner was appointed in the year 1993 pursuant to which the measurement was carried out. The same is part of the record of the Trial Court. It is at the Appellate Stage that the instant application came to be filed by the Petitioners on the ground that

no notice of the said survey was issued to the Petitioners. The said contention of the Petitioners was dealt with by the Lower Appellate Court by referring to the cross-examination of the Petitioners in the Trial Court, wherein the predecessor of the Petitioners has admitted that he was present at the time of the measurement. The Lower Appellate Court has also observed that the instant application has been filed long after the measurement was carried out whilst the proceedings were in the Trial Court and also long after the instant Appeal was filed in the Lower Appellate Court. Incidentally, the instant Appeal is of the year 2008 and bears Regular Civil Appeal No.10 of 2008. Having regard to the well settled principles applicable to Order 26 Rule 9 of the CPC, no case for interference in the Writ Jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed.

[R.M. SAVANT, J]