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

WRIT PETITION (ST.) NO. 17478 OF 2016

Nivrutti Ganpatrao Gawari and Anr. ... Petitioners.

V/s.

Atur India Limited. ... Respondent.

Mr. Uday Warunjikar a/w. Vilas Tapkir for the Petitioners.

Mr. S.R. Ganbavale for the Respondent.

CORAM : N.M. Jamdar, J.

29 September, 2016.

Oral Orders :-

Heard learned Counsel for the parties. The learned Civil Judge has appointed the Taluka Inspector of Land Records, Shirur as a Commissioner to carry out local inspection in view of the dispute between the parties regarding the exact location of the road. Though the suit is filed for injunction, the learned Civil Judge has found that no cogent evidence is coming forth from both the sides and inspite of the parties carrying out the measurement twice, the dispute keeps arising about the location, therefore, the local inspection is necessary.

2. The learned Counsel for the Petitioners, after arguing the matter for some time, accepted the position that the Court Commissioner can be appointed but he submits that the Court

Commissioner must look into the entire land and not only the two properties. The learned Counsel for the Respondent objects and states that the prayer of the learned Counsel for the Petitioners is beyond the scope of the suit.

3. What the learned Civil Judge has directed is to ascertain the location of the road. If the Court Commissioner finds that for placing this position on record, area other than the two suit properties needs to be measured for effective commission, it will be open to the Court Commissioner to do so. Since the Court Commissioner is being assigned the task by the learned Civil Judge, he will have to take a decision as to which measurement is required for performing the task. The learned Counsel for the parties also agree this position. In view of this consensus between the parties, no further orders are required to be passed. The Writ Petition is accordingly disposed of.

4. Needless to state that when the report is placed before the learned Civil Judge, the learned Civil Judge will, before accepting the same, will give opportunity to both the parties to comment upon the same, at that time it is open for the parties to make their submissions on the correctness of the report.

(N.M. Jamdar, J.)