

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6634 OF 2015

Hari Ananda Shewale and others

.. Petitioners

Versus

Uttam Shivram Shewale and others

.. Respondents

Mr. S. D. Shinde, for the Petitioners.

Mr. R. N. Gite, for the Respondents.

CORAM : R.M. SAVANT, J.

DATE : 23rd FEBRUARY 2016

PC.

1. The writ jurisdiction of this Court is invoked against the order dated 08.04.2015 passed by the Learned Civil Judge Junior Division, Kalwan, District Nashik, by which order, the application for appointment of the Court Commissioner under Order 26 Rule 9 of the CPC came to be rejected.

2. The suit in question has been filed by the Petitioners/Plaintiffs for removal of encroachment from Gat No.388/1 and 388/2 of village Kalwan. The Plaintiffs have founded their suit on the measurement map which they have produced and which has been marked as Exh.39. The Plaintiffs have also adduced the evidence of the Government Surveyor

who had carried out the measurement. It seems that the suit has proceeded to trial and presently the evidence on behalf of the Plaintiffs is being led. The Trial Court has rejected the instant application Exh.36 on the ground of the Plaintiffs themselves having filed the measurement map and having led the evidence of the person who had carried out the measurement, as also on the ground that the Plaintiffs are trying to protract the hearing of the suit.

3. In so far as the rejection of the application on the ground that the Plaintiffs had filed the measurement map and have also led evidence of the person who had carried out measurement, no fault can be found with the order passed by the Trial Court having regard to the well settled principles applicable to Order 26 Rule 9 of the CPC. It is for the Plaintiffs to prove their case based on the said map. However, in the event the Trial Court is of the view that a joint measurement is required to be carried out of the lands in question, it is always open to the Court to appoint a Court Commissioner at the appropriate stage. Hence, no case for interference in the writ jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed.

[R.M. SAVANT, J]