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

WRIT PETITION NO. 10128 OF 2012

Mr. Anna Dattu Saimote & Anr. ...Petitioners.

V/s.

Mr. Bapu Nabhu Chougule & Ors. ... Respondents.

Mr. Umesh Mankapure for the Petitioners.

Mr. Anilkumar Patil for Respondent 1.

CORAM : N.M. Jamdar, J.

14 September, 2016.

Oral Order :-

By this Petition the Petitioners challenge the order dated 26 September 2012 whereby a Commissioner has been appointed to measure the suit land.

2. Heard the learned Counsel for the parties. The learned Counsel for the Petitioners – Defendants submitted that the Commissioner has been erroneously appointed to measure the land for measurement in respect of Gat No.1251. He submitted that in written statement filed in Special Civil Suit No. 288 of 2009 which

was filed for partition, the Respondent – Plaintiff has taken a stand that Gat No.1251 is not in existence. The learned Counsel for the Petitioners submitted that the suit is for injunction and for collection of evidence, the Commissioner cannot be appointed.

3. The impugned order was passed on 26 September 2012. While issuing notice and granting interim order, this Court has not stayed the proceedings in the suit. It is informed that the application for temporary injunction was heard and the outcome is in favour of the Respondent – Plaintiff. Therefore, for the purpose of temporary injunction, the apprehension that the measurement will be used does not survive. As regard the merits of the trial are concerned, the parties will have to lead their evidence and the report of the Commissioner would be one such piece of evidence. As regard the contention that Gat No.1251 does not exist, that is a stand taken in some other proceedings and this stand will be no doubt considered by the learned Judge when the suit is taken up for consideration.

4. Even merely because Gat No.1251 has been specified in the operative portion of the impugned order, it does not mean that the learned Civil Judge has overruled the contention of the Petitioner, based on the statement of the Respondent in the other suit that Gat No.1251 does not exist. If the position that the Petitioners that Gat No. 1251 does not exist is correct, the

Commissioner, the Taluka Inspector of Land Records will no doubt notice the same and if this is the correct position, it will surely be mentioned in the report. Therefore, the Petitioners are not prejudiced by this order, as nothing on merits has been decided by the impugned order. Keeping all contentions of the parties as regard the argument regarding Gat No.1251 referred to above, to be adjudicated at the time of trial, the Writ Petition is disposed of.

(N.M. Jamdar, J.)