

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

WRIT PETITION NO. 3698 OF 2015

Smt.Hajrabi Ibrahim Maulavi & Anr.

...Petitioners

Versus

Qureshi Masjid Trust Solapur
through Its Chairman

Mohmad Ayyub Haji M. Sab Qureshi & Ors.

...Respondents

.....

Mr.Shriram S. Chaudhari for the Petitioners.

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**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: APRIL 28, 2017**

P.C. :

1. Rule. Rule made returnable forthwith. The Petition is heard finally and disposed of at the stage of admission.
2. This petition is directed against the order dated 16.10.2004 passed by the learned District Judge -2, Solapur in Regular Civil Appeal No. 221 of 2013 thereby rejecting the application filed by the appellants i.e. original plaintiffs for seeking appointment of Court Commissioner under section 26 of Code of Civil Procedure.

3. The learned counsel appearing for the petitioners submits that the suit is between sisters and brothers. The suit was filed for a declaration, perpetual injunction and right of redemption. The suit was dismissed, vide order dated 02.05.2013 passed by the learned 4th Jt. Civil Judge, Jr. Division, Solapur. Thereafter, the petitioners i.e. original plaintiffs had filed an appeal. In appeal, the trial Court has granted order of status quo, despite the said order of status quo, the respondents have constructed shops in the suit premises and some other persons are in possession of those shops and therefore, he submits that the appointment of Court Commissioner is necessary for effective adjudication of the appeal and therefore, the learned trial Court ought not to have rejected the said application. Accordingly, he moved an application on 07.08.2014 at Exhibit 28 in Regular Civil Appeal No. 221 of 2013. He further submits that the order dated 16.10.2014 passed by the learned District Judge-2 Solapur needs to be set aside.

4. Perused the prayer and also the impugned order passed by the learned District Judge-2 Solapur below Exhibit 28 in Regular Civil Appeal No. 221 of 2013. Considering the nature of

application for appointment of the Court Commissioner, it appears that the appellants want to collect the evidence in respect of unauthorized construction. The application was rightly rejected. Moreover, it is to be noted that this application was rejected in the year 2014 nearly prior to 3 years. The trial Court to expedite the matter. In view thereof, Writ Petition is disposed off.

(MRIDULA BHATKAR, J.)