

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

WRIT PETITION NO.13161 OF 2018

Baliram Shrihari Kale and Ors. .. Petitioner

V/s.

Janardhan Murlidhar Borade and Ors. .. Respondents

Mr.S.T.Bhosale for the petitioner

CORAM: K.K. TATED, J

DATED : DECEMBER 4, 2018

P.C. :

1 Heard.

2 By this petition under Article 227 of the Constitution of India, the Petitioner challenges the order dated 25.09.2018 passed by Joint Civil Judge, Junior Division, Madha below Exhibit-54 allowing Respondent original plaintiff's Application under Order 26 Rule 9 of the Code of Civil Procedure, 1908 for appointment of Court Commissioner.

3 When this court declined to entertain the present Writ Petition, the learned counsel for the Petitioner submits that in the present proceedings, earlier Petitioner original defendant filed Regular Civil Suit No. 173 of 2007 before the Joint Civil Judge, Junior Division Mada for permanent injunction. In that Suit, Court Commissioner was appointed to measure their agricultural land bearing Gut no.33 admeasuring (15H=30R)

situated at village Mungashi, Taluka Madha, Dist Solapur. He submits that he received instruction from his client that they have no objection for appointment of Court Commissioner under Order 26 Rule 9 of the Code of Civil Procedure, 1908 in Regular Civil Suit No.263 of 2011 as per impugned order dated 25.09.2018 but the measurement to be done jointly including the petitioner's property. To that effect, he has given in writing. Same is taken on record and marked 'X' for identification.

4 In view of the statement made by the learned counsel for the Petitioner, following order is passed:

a) Order dated 25.09.2018 passed by Joint Civil Judge, Junior Division, Madha below Exhibit- 54 in Regular Civil Suit No. 263 of 2011 on Application filed by Respondent original plaintiff under Order 26 Rule 9 of the Code of Civil Procedure, 1908 for appointment of Court Commissioner to measure the suit property i.e. Gut no.42/1 is confirmed.

b) Court Commissioner is directed to carry out joint measurement along with Petitioner original defendant's Gut no.33.

c) Writ Petition stands disposed of accordingly.

(K.K. TATED, J.)