

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

WRIT PETITION No.9078 OF 2016

Shri Raju Dattatray Tambe & anr.

... Petitioners

Vs.

Mahadeorao yashwantrao Ghorpade & Ors.

... Respondents

Mr.Balwant Salunke i/b S.S. Prabhune for the Petitioners

**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: JULY 24, 2018**

P.C. :

1. This petition is directed against the order dated 17.10.2015 passed by the learned Adhoc District Judge, Baramati, thereby rejecting the exhibit 9 application in Regular Civil Appeal No.62 of 2010. The petitioner is a plaintiff, who has filed the suit for perpetual injunction against the defendant.
2. None appears for the respondents, though served. Affidavit of service is filed.
3. The plaintiffs' Regular Civil Suit No.158 of 2002 was dismissed against which he filed a Regular Civil Appeal. In the

appeal, he moved an application for appointment of Court Commissioner under Order 26 Rule 9 of the Civil Procedure Code. The trial Court considered that application under Order 41 Rule 27 of the Civil Procedure Code. The trial Court has considered that the plaintiff/appellant could not show anything on record that the trial Court has rejected such application.

4. Learned Counsel for the petitioners submits that the trial Court has erred in considering this application under Order 41 Rule 27 and should have considered this application independently under Order 26 Rule 9 of the Civil Procedure Code.

5. After going through the application for appointment of Court Commissioner, it is found that in the said Suit, earlier, a TILR was appointed and he has submitted a report. If at all, there was a Court Commissioner's report already on record, then, unless that report is challenged, there is no necessity to appoint other Court Commissioner. The learned Counsel is unable to inform whether that report was exhibited or whether that is challenged by him before the trial Court. He is also unable to inform whether the TILR was cross-examined on this point or not. Moreover, the view

taken by the trial Court that no additional evidence is required at the appeal stage, is a correct view and it cannot be faulted with.

6. In the circumstances, the petition is dismissed.

(MRIDULA BHATKAR, J.)