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

WRIT PETITION NO.9221 OF 2016

Tukaram Kerba Masal and ors	...	Petitioners
V/s.		
Kisan Sadashiv Bhichkule an		
ors	...	Respondents

Smt. Smita G. Mane, for the Petitioners.
Mr. Milind Deshmukh, for the Respondent No.1.
Mr. A. R. Metkari, AGP for respondent No.10.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 22nd MARCH, 2018.

P.C. :

1] Heard learned counsel for the petitioners and respondents.

2] By this petition filed under Article 227 of the Constitution of India, the petitioners are challenging the order dated 10th February, 2016, passed by the Civil Judge Senior Division, Baramati, below Exh.37 in R.C.S. No.252 of 2012.

3] Application at Exh.37 was filed by the present petitioners, who are the original plaintiffs before the trial Court, requesting the Court to direct the T.I.L.R. Baramati to measure the land gat No.268 and to submit the report showing factual position of the area as well

as location of the road in the said gat number.

4] This application was strongly resisted by the respondent-defendants, on the grounds that previously also such application at Exh.24 was filed for the appointment of the Court Commissioner. Accordingly, the Court Commissioner was appointed and he has submitted his report on 27.9.2012 at Exh.30. Thereafter one more application was filed by the petitioners with the same prayer at Exh.31 on 7.11.2012 and it was rejected by the Court on 15.01.2013 and thereafter again this third application is filed in which rejection of application at Exh.31 is not at all mentioned.

5] In view thereof, the trial Court was justified in rejecting the said application, especially when already the Court commissioner was appointed and he has also submitted his report justifying the contention of the petitioners that in the place of foot way, road admeasuring width of 13 to 14 feet is created. When already the report of the Court Commissioner, alongwith the map, is on record and on that ground the second application of the petitioners was dismissed, there was no propriety at all in appointing T.I.L.R., as the Court Commissioner.

6] Moreover, the suit filed by the petitioners is not for removal of encroachment and to get possession of encroached portion so that the appointment of T.I.L.R, would help to measure the

property and demarcate the boundaries particularly to show encroached portion. The suit is only for declaration and mandatory injunction, directing respondents to make road as it was previously. Now for that purpose the report of the Court Commissioner which is at Exh.30 alongwith the map is more than sufficient.

7] In view thereof, no fault can be found in the impugned order passed by the trial Court rejecting the petitioners' application.

8] The Writ Petition, therefore, being without merits stands dismissed.

[DR.SHALINI PHANSALKAR-JOSHI, J.]