

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

**WRIT PETITION NO.5730 OF 2016**

Subhash Pundalik Nirgude & Ors.

.. Petitioners

Vs.

Shivaji Malhari Gore & Ors.

.. Respondents

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Mr.S.M. Sabrad for the petitioners.

Mr.Sachin Gite for the respondent nos.1 & 2.

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**CORAM : R.D. DHANUKA, J.**

**DATE : 5<sup>th</sup> September 2018**

**P.C.:**

. By this petition filed under Article 227 of the Constitution of India, the petitioners have impugned the order dated 12<sup>th</sup> September 2014 passed by the learned Civil Judge, Junior Division, Chandwad, District Nashik below exhibit-40 rejecting the application filed by the petitioners (original plaintiffs) under Order XXVI Rule 9 of the Code of Civil Procedure, 1908 (for short “the said Code”) inter alia praying for appointment of TILR, Chandwad with a direction to fix the boundaries of Shiv Road (boundary road) and for joint measurement of the suit properties along with the properties of the respondents (original defendants).

2. Under Order XXVI Rule 9 of the said Code, the Commissioner cannot be appointed for the purpose of fixing the boundaries. The suit is simplicitor for injunction. On the earlier application filed by the petitioners inter alia praying for appointment of the Commissioner, the learned trial Court had already appointed an Advocate for that purpose who has already submitted a report. Learned

trial Judge has thus rightly held that the suit was simplicitor for injunction without praying for removal of encroachment on the suit proper and thus the TILR, Chandwad could not have been appointed for the purpose of fixing the boundaries.

3. It is for the petitioners to decide whether to examine the earlier Court Commissioner as a witness or not. In my view, the second application was thus untenable and has been rightly rejected. Petition is devoid of merit and is accordingly dismissed. No order as to costs.

***R.D. DHANUKA, J.***