

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

**WRIT PETITION NO.4344 OF 2016**

Shri Malhari Shankar Gadade and ors. ... Petitioners

Vs.

Shri Govind Baban Gadade and ors. ... Respondents

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Mr.Yashwant Lengare i/by Mrs.Suman Lengare for the  
Petitioners.

None for the Respondents.

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**CORAM : M.S.SONAK, J.**

**DATE : APRIL 20, 2018.**

**P.C. :**

1. Heard Mr.Yashwant Lengare, learned counsel for the  
Petitioners.

2. The challenge in this Petition is to the order dated 28<sup>th</sup>  
September 2015, by which learned Trial Judge has dismissed the  
Petitioners' application at Ex.22 seeking appointment of Court  
Commissioner.

3. Mr.Lengare submitted that the learned Trial Judge has failed  
to appreciate the true and correct scope of the provisions  
containing Order XXVI Rule 9 of the Code of Civil Procedure. He  
submits that despite the existence in the property, of a road, a tap  
and a temple, the Respondents, denies such existence, and on  
such basis, the Petitioners have even been deprived the relief of

temporary injunction. In such circumstances, Mr.Lengare submits that it was necessary to accede to the request of the Petitioners for appointment of the Court Commissioner. The impugned order by which such request has been rejected amounts to failure to exercise jurisdiction which is vested in the learned Trial Judge. On these grounds, Mr.Lengare submits the impugned order warrants interference.

4. From the perusal of the impugned order as well as material on record, it cannot be said that the impugned order suffers from any infirmity. The purpose of appointment of the Court Commissioner is not to collect any evidence for the parties. If the structures indeed exist, as contended by the Petitioners, then, there should be absolutely no difficulty for the Petitioners to lead evidence in that regard. Learned Trial Judge has correctly appreciated the scope of the provisions under Order XXVI Rule 9 of the Code of Civil Procedure and therefore, there is no jurisdictional error so as to warrant any interference with the impugned order. Accordingly, this Petition is dismissed. There shall be no order as to costs.

**(M.S.SONAK, J.)**