

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

WRIT PETITION NO. 6693 OF 2018

Jaisingh Bhau Nalawade and Ors. **... Petitioners**

V/s.

Uttam Kundalik Nalawade and Anr. **... Respondents**

Mr. Prasanna Shahane I/b Milind Deshmukh for the Petitioners.
Mr. Kalpesh Patil for the Respondent No.1.

**CORAM : M.S.SONAK, J.
DATE : 15TH APRIL, 2019**

:ORAL JUDGMENT:

1. Rule. Rule made returnable forthwith with the consent and at the request of the parties.
2. Heard Mr. Prasanna Shahane for the Petitioner and Mr. Kalpesh Patil for the Respondent No.1.
3. Challenge in this petition is to order dated 21.03.2018 by which the learned Trial Judge has rejected the Petitioner's application seeking appointment of Court Commissioner. Ordinarily, such orders are discretionary and therefore, no interference is warranted. However, in the peculiar facts of the present case, it is seen that the Appeal Court had itself suggested that it will be in the interest of effective adjudication of the issue involved in this suit, if the parties

seek for appointment of the Court Commissioner. No doubt that Appeal Court has also observed that if such application is made, the same should be disposed of in accordance with law.

4. Learned Trial Judge has not given to the sufficient weight to the observations made by the Appeal Court in its application dated 24.04.2017. Since, the Appeal Court itself observed that it will be in the interest of effective adjudication, if the Court Commissioner is appointed and boundaries are ascertained, the Trial Judge in the peculiar facts of the present case was required to exercise discretion in favour of Petitioners herein.

5. For the aforesaid reasons, the impugned order is set aside and the Petitioners' application at Exhibit 35 is allowed. However, it is made clear that all expenses towards appointment of Court Commissioner shall have to be borne exclusively by the Petitioners. Once the Commissioner submits its report, both the parties will have opportunity to lodge their objections to the Commissioner's Report and in case the Court Commissioner ultimately examine in the suit, the parties will have opportunity to cross-examine such Court Commissioner as well. The effect of weightage of the report of the Court Commissioner is therefore, kept open.

6. The rule is made absolute in the aforesaid terms. There shall

be no order as to costs.

7. All concerned to act on the basis of an authenticated copy of this order.

(M.S.SONAK, J.)