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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**WRIT PETITION NO. 3728 OF 2019
WITH
CIVIL APPLICATION NO.1026 OF 2019**

Jaiprakash Bansilal Raka & Anr.	..Petitioners.
V/s.	
Mrs.Alka S.Surana & Ors.	..Respondents.

Mr.Shriram S.Kulkarni for the petitioners.

Mr.Aloukik Pai with Tejas Luniya I/b. Thodur Law Associates for respondent Nos.1 to 4, 6 & 7.

CORAM : M.S.SONAK, J.

DATE : APRIL 26, 2019

ORAL JUDGMENT

Heard Mr.Kulkarni, learned counsel for the petitioners and Mr.Pai, learned counsel for the respondents.

2. Rule. Rule made returnable forthwith with the consent and at the request of the parties.

3. The petitioners have made certain allegations against Mr.Kanhere, which *prima facie* appears has no much substance. The record indicates that it is the petitioners who prevented Mr.Kanhere from executing the commission work by refusing to answer certain queries and for bringing further orders from the Court. This is not

proper and on this point no case is made out for replacement of Mr.Kanhere. Nevertheless, it is necessary to note that the dispute is between the siblings relating to the partition of the property. Therefore, now since the petitioners have certain issues with Mr.Kanhere, in order that the petitioners gets no impression that the Commissioner was a little hostile to the petitioners, not initially but because of the petitioners having made such allegations against him now, in the interest of justice, it will be appropriate if some other Commissioner is appointed to execute this commission. It is further made clear that this Court has not accepted any of the allegations against Mr.Kanhere and the only reason for Mr.Kanhere being replaced with another Court Commissioner is to see that the justice is not only done but it is manifestly seen to be done.

4. At the same time, it is made clear that all the expenses in connection with the appointment of Mr.Kanhere and his staff will have to be borne by the petitioners. Learned counsel for the petitioners, on the basis of instructions, states that the costs will indeed be borne by the petitioners. Learned trial Judge to determine the costs payable to Mr.Kanhere and the petitioners to deposit such costs within one week from the said determination by the learned trial Judge without any delay or unnecessary objection.

5. The matter is posted on April 29, 2019. The parties to

appear before the learned trial Judge on this date. Learned trial Judge to appoint another Court Commissioner to execute the commission in terms of the order already made. Again, it is made clear that all expenses towards the appointment of such fresh Commissioner will have to be borne exclusively by the petitioners. Learned counsel for the petitioners, on the basis of instructions agree that such costs will be indeed borne by the petitioners without any denial.

6. Learned trial Judge to direct the Court Commissioner to complete the commission work as expeditiously as possible and in any case on or before June 30, 2019.

7. Learned counsel for the parties assure this Court that the parties will render full co-operation to the new commissioner to execute the commission work and not create unnecessary obstacles in the execution of the commission work.

8. Learned counsel for the respondents states that police protection for execution of the commission is already made. Mr.Kulkarni, on instructions from the petitioners states that there will be no obstruction and, therefore, there will be no occasion for seeking any police protection. This Court also sees no such occasion will arise with the petitioners having secured an order, which in fact they did not deserve, will resist the execution of the commission work or delay the work of the Commissioner. However, if any unsavoury events are

done, learned trial Judge to revive making order for grant of police protection to execution the commission work.

9. The rule is disposed of in the aforesaid terms. There shall be no order as to costs.

10. In view of the disposal of the petition, the civil application also stands disposed of.

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

(M.S.SONAK, J.)