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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION (ST) NO.6580 OF 2019

Suman Bharat Gaikwad & Ors. ..Petitioners.

V/s.

Deepak Appa Gaikwad & Ors. ..Respondents.

Mr.Shriram S.Kulkarni I/b. D.J. Jadhav for the petitioners.

None for the respondent.

CORAM: M.S.SONAK, J.

DATE : MARCH 12, 2019

P.C.:-

Heard Mr.Kulkarni, learned counsel for the petitioners.

2. Challenge in this petition is to the order dated February 11, 2019 by which the learned trial Judge has dismissed the petitioner's application seeking recall of the order dated October 30, 2018 for appointment of Commissioner. Mr.Kulkarni points out that the petitioner has also challenged the order dated October 30, 2018 actually appointing the Commissioner.

3. Mr.Kulkarni submits that this is a clear case where the Court Commissioner has been appointed to collect evidence for petitioner. He submits that the said course of action is impermissible

and thus, the impugned order warrants interference.

4. This is the case where the plaintiff has alleged encroachment. Accordingly, it is only appropriate that the Court appoints a Court Commissioner. The petitioner had in fact an opportunity to oppose the application for appointment of Court Commissioner. However, such appointment was not opposed. Even otherwise, this is not a case where the impugned order can be said to be in excess of jurisdiction.

5. Accordingly, this petition is liable to be dismissed and is hereby dismissed.

6. There shall be no order as to costs.

7. It is hereby clarified that once the report of the Court Commissioner is received, the petitioner would have right to cross examine the Court Commissioner if there is a proposal to consider the report of the Court Commissioner in evidence.

8. With this liberty, the petition is disposed of.

(M.S.SONAK, J.)