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

**APPEAL FROM ORDER NO. 240 OF 2019
WITH
CIVIL APPLICATION NO. 279 OF 2019
IN
APPEAL FROM ORDER NO. 240 OF 2019**

Mohanbhai Nagarbhai Valand (dead)
through LRs. Smt. Gajaraben Mohanbhai
Valand and ors. ..Appellants

vs.

Vinodbhai Dalapatbhai Solanki
and ors. ..Respondents

....

Shri A.N. Giri a/w. Shri Sagar Batavia for appellants.
Shri Sachin S. Padaye i/b. Shri G.R. Agrawal for respondent
Nos. 1 and 2.

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CORAM : M.S.KARNIK, J.

DATE : 23rd JULY, 2019

P.C. :

Heard learned counsel for the appellants and learned
counsel for the respondents.

2. The present Appeal from Order is filed against the
order passed below Exhibit 86 by the trial Court rejecting the
request made by the plaintiffs for appointment of the Court

Commissioner and for injunction restraining the defendants from carrying out work of digging or construction over suit property. The said application is rejected by the trial Court for the reasons mentioned in the application.

3. On an earlier occasion the plaintiffs had filed an application (Exhibit 39) seeking similar reliefs of injunction as claimed in Exhibit 86 application. Against the order rejecting application (Exhibit 39) the plaintiffs filed an Appeal before the District Court, Dadra and Nagar Haveli at Silvassa. The District Court was pleased to reject the Appeal by an order dated 19th February, 2018. Learned Counsel for the respondents pointed out that the Civil Revision Application against the said order is pending in this Court.

4. Sometime in February, 2019 the application (Exhibit 86) is filed for appointment of the Court Commissioner and for directing the respondents to maintain the status quo in respect of the suit property and also for removing electric meter which is installed. The said application is rejected by the trial Court by

the impugned order. In my opinion, no interference is called for against the order passed by the trial Court as on earlier occasion for the very same reliefs by a detailed order the trial Court had rejected the application for injunction made by the plaintiffs. The Appeal from Order is dismissed.

5. However, in so far as the prayer for setting aside the order passed by the trial Court refusing to appoint the Court Commissioner, this Appeal from Order is not maintainable. The appellants would at liberty to challenge this part of the order of the trial Court appointing a Court Commissioner by adopting appropriate remedies.

6. The Appeal from order is disposed of.

7. In view of the disposal of the Appeal, nothing survives for consideration in the Civil Application. The Civil Application is disposed of.

(M.S.KARNIK, J.)