

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

WRIT PETITION NO.10241 OF 2018

Dattatray Sarjerao Sandbhor and ors. ... Petitioners

Vs.

Uttam Malhari Kapare and ors. ... Respondents

.....

Mr. Vilas B. Tapkir for the Petitioners.

.....

CORAM : M. S. KARNIK, J.

DATE : 27th AUGUST, 2019.

P. C.:

1. Heard learned counsel for the petitioners.
2. The petitioners are the original plaintiffs. The Tahasildar in proceeding under Section 5 of the Mamlatdar Courts Act had granted a right of way in favour of defendants. The plaintiffs filed the present suit for declaration and injunction against respondent No.1 from using the suit way. The plaintiffs had initially filed an application below Exhibit 30 for appointment of T.I.L.R. as the Court Commissioner to inspect the suit property. That application came to be allowed. Thereafter the application is made below Exhibit 35 for reappointment of the Court

Commissioner. This application Exhibit 35 was made on the premise that the earlier Court Commissioner did not submit report in terms of that order passed by the Trial Court. The Trial Court has rejected this application on the ground that the map of T.I.L.R. is yet to be proved in accordance with law. For these reasons the Trial Court rejected the application for reappointment of the Court Commissioner. As the parties are yet to lead evidence, in view of observations of the Trial Court that the map of the T.I.L.R. is still to be proved, I do not see any reason to interfere with the order passed by the Trial Court. However after the evidence is over the plaintiff can always make an application for appointment of Court Commissioner if necessary which shall be considered by the Trial Court on its own merits and in accordance with law.

3. Keeping this liberty open the present Petition is rejected.

(M. S. KARNIK, J.)