

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

WRIT PETITION NO.6502 OF 2017

**Walu Ramji Ghorpade
(Since deceased through LRs)
1A. Dagubai Walu Ghorpade & Ors.**

...Petitioners

Vs.

Nivrutti Kedu Ghorpade & Ors.

...Respondents

Mr. Sachin Gite, for the Petitioners

CORAM : M. S. SONAK, J.

DATE : APRIL 18, 2019

P.C.:

1. Heard Mr. Gite for the petitioners.
2. Challenge in this petition is to the order dated 6/4/2017 by which Ld. Trial Judge has rejected the petitioners' application for appointment of Court Commissioner.
3. Mr. Gite pointed out that the respondents in their written statement had also suggested the appointment of Court Commissioner i.e. officer from the office of TILR office. He submits that if the Court Commissioner is appointed, the disputes between the parties can be effectively sorted out. In these circumstances, Ld. Trial Judge should

have accepted the petitioners' application at Exh.18 for appointment of Court Commissioner.

4. From the perusal of the impugned order, it is seen that the Ld. Trial Judge has noted that the petitioners have right to approach the concerned TILR office and seek necessary reliefs in connection with demarcation and measurement. Taking into consideration the fact that it is not a case for encroachment or fixing the boundaries, the Ld. Trial Judge is quite right in declining the appointment of Court Commissioner by exercising his discretion under Order 26 Rule 9 of CPC.

5. There is no infirmity in the view taken by the Ld. Trial Judge. However, it is always open to the parties to appoint surveyor and thereafter examine the surveyor in the course of trial.

6. With liberty as aforesaid, this petition is disposed of.

7. There shall be no order as to costs.

(M. S. SONAK, J.)