

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.374 OF 2018

Anil Digambar Gaikwad and Ors. ...Petitioners
vs.
Mahanda Vitthal Ronge ...Respondent

Mr. N.N. Pawar, for the Petitioners
Mr. A.A. Joshi, for the Respondent

CORAM : M. S. SONAK, J.

DATE : MARCH 20, 2019

P.C.:

. Heard Mr. Pawar, learned counsel for the Petitioners
and Mr. Joshi, learned counsel for the Respondent.

2. The challenge in this Petition is to the order dated 17th
July, 2017 made by the trial Court rejecting the Petitioners'
application for appointment of the Court Commissioner.

3. Mr. Pawar, learned counsel for the Petitioners submit
that there is no bar to the Appeal Court appointing the Court
Commissioner in order to ascertain the true and correct facts at
loco. He therefore submits that the failure on the part of the Appeal
Court appointing the Court Commissioner can not amount to
failure to exercise jurisdiction.

4. Mr. Joshi, learned counsel for the Respondent defends

the impugned order on the basis of reasoning reflected therein.

5. From the perusal of the Petitioners' application seeking appointment of the Court Commissioner, it is apparent that the Petitioners' claims to collect evidence in the matter. The Court Commissioner cannot be appointed for the parties to collect evidence in their favour. Besides, it is pertinent to refer the circumstance that the Petitioner did not seek for appointment of Court Commissioner before the trial Court.

6. Accordingly, it cannot be said that there is any jurisdictional error in the impugned order.

7. This Petition is therefore dismissed.

8. There shall be no order as to costs.

(M. S. SONAK, J.)