

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 12768 OF 2016**

Dnyanu Vithu Ghag

Since deceased through his heirs
and legal representatives

1A) Sambhaji Dnyanu Ghag and Ors.

.... Petitioners.

V/s

Yuvraj Shivaji Patil

.... Respondent.

Mr. Shriniwas S. Patwardhan for the Petitioner.

Mr. Chetan G. Patil for Respondent No.1.

CORAM: NITIN W. SAMBRE, J.

DATE: FEBRUARY 25, 2021

P.C.:-

1] The order impugned is dated 3/3/2016 passed by Joint Civil Judge, Junior Division, Panhala in a suit for perpetual injunction. The order is assailed on the ground that the Court below was not justified in exercising powers at the stage where the suit has reached i.e. final hearing. The learned Counsel then would urge that provisions of Order 26 Rule 9 cannot be invoked so as to collect the evidence.

2] I have perused the order impugned and also rival pleadings. It is apparent from the record that the Court, after having completed

recording of evidence, got itself satisfied that there is need for appointment of Court Commissioner so as to find out boundaries of the property of the Petitioners and Respondent. Order 26 Rule 9 in its ambit also covers the situation where the Court's satisfaction and need for deciding the issue involved in the suit is also required to be taken into account.

3] In the aforesaid backdrop, no case for interference is made out. Petition fails and same stands dismissed.

(NITIN W. SAMBRE, J.)