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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5368 OF 2019

Bapu G. Hargude and ors. ...Petitioners.
V/s.
Sadashiv B. Pawar and anr. ...Respondents.

Mr. Kalpesh U. Patil for the Petitioners.
Mr. T.D. Deshmukh for Respondent Nos.1 and 2.

CORAM : N.R. BORKAR, J.
DATE : 20.08.2021.

P.C. :

1. This petition takes an exception to the orders dated 10.4.2018 and 13.11.2018 passed below Exhibit-28 and Exhibit-37 respectively by the learned Civil Judge, Senior Division, Pune in Regular Civil Suit No. 1668 of 2017.

2. In the above suit, the respondents herein filed an application for appointment of Court Commissioner. The trial court allowed the said application by the order dated 10.4.2018. The said order reads thus:

- "1) The application at Exhibit-28 is allowed.*
- 2) T.I.L.R. Haveli is appointed as Court Commissioner.*
- 3) The court commissioner is hereby directed to measure the entire Gat No. 347 situated at Mouje Kesnand, Tal. Haveli, Dist. Pune. He is also directed to demarcate and fix the boundaries of said gat number as per the revenue record and to show the exact area of said gat number along with encroachment, if any.*
- 4) The plaintiff to deposit the commission fees in the concerned office and file its copy in the court on or before next date.*
- 5) Issue writ accordingly."*

3. As according to the respondents, the above order was not going to resolve the controversy between the parties, they filed an application seeking review of the abovesaid order. The petitioners resisted the said application. The trial court after hearing the parties passed the following order on 13.11.2018:

"1) In addition to order pass below Exh.28 it is directed to the Court Commissioner to measure, demarcate and fix the boundaries of the land which was purchased by the plaintiff through a sale deed dated 29/1/2003. By showing that portion in the map, he is also directed to show the encroached portion specifically (in length and width) if any in the suit property.

2) Accordingly this application is disposed off."

4. The learned counsel for the petitioner submits that the order dated 13.11.2018 is unsustainable in law. It is submitted that such order cannot be passed in a review jurisdiction.

5. Admittedly, the suit *inter - alia* is for removal of encroachment. The said issue can be decided only on the basis of T.I.L.R's report. By order dated 13.11.2018, the Court Commissioner is asked to specify the encroachment. If it is not done, then whole exercise will be futile.

6. Considering the above facts and circumstances of the case, I am not inclined to interfere with the orders impugned in the writ jurisdiction. Hence, Writ Petition stands dismissed.

[N.R.BORKAR, J.]