

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9450 OF 2016

Mrs. Aroti G. Bhattacharya
& Others

.. Petitioners.

v/s.

Mrs. Kirti A. Amale

.. Respondent.

Mr. Surel S. Shah, for the Petitioners.

CORAM: MADHAV J. JAMDAR,J.
DATED : 6th AUGUST, 2021.

PC:-

Heard Mr. Surel Shah, learned Counsel for the Petitioners.

2 By this Petition filed under Article 227 of the Constitution of India, Petitioners who are original plaintiffs, had challenged the order dated 29th June, 2015 passed by the learned Joint Civil Judge, Senior Division, Nashik below Exh. 58 in Special Civil Suit No.26 of 2014. In Exh. 58- application, prayer was made to appoint Court Commissioner to take possession of the suit premises and hand over the same to the plaintiffs by making necessary panchnama. The said application was rejected by the impugned order.

3 Mr. Shah, learned Counsel for the Petitioners submits that in the peculiar circumstances of this case, the relief which is sought in the application at Exh. 58 be granted in the interest of justice. He further submits that Defendant was in occupation of the premises on the basis of leave and license agreement and inspite of termination of the same,

Defendant failed to deliver the possession of the said premises to the plaintiffs. He, submitted that, however, in the written statement, Defendant contended that she had already delivered possession to the Plaintiffs and in view of such contention, Exh. 58 was filed, seeking abovereferred reliefs.

4 The learned Trial Court while rejecting Exh. 58 application observed that the application is beyond scope of Order 26 Rule 9 or 10 of CPC . The learned Trial Court has held that the question who is in possession of the property, can be decided by the learned Trial Court on the basis of oral and documentary evidence laid by the parties. No fault can be found with the reasoning given by the learned Trial Court. It is well settled position that Commission cannot be appointed for collection of evidence. Therefore, this is not the case where discretionary jurisdiction of this Court under Article 227 of Constitution of India is to be exercised.

5 Therefore, Writ Petition is dismissed, however with no order as to costs.

(MADHAV J. JAMDAR,J.)