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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 13042 OF 2019**

Mr. Chandrakant Rajendra Nade and Ors. Petitioners.

V/s

Mr. Suresh Nana Jadhav Respondent.

Mr. Vijaykumar R. Garad for the Petitioners.

Mr. Sharad T. Bhosale for Respondent Nos. 1 to 3.

CORAM: NITIN W. SAMBRE, J.

DATE: FEBRUARY 25, 2021

P.C.:-

1] Heard.

2] This Petition is by the Defendant in RCS No. 153 of 2016 which is for removal of encroachment, possession and injunction. Vide order dated 20/4/2019, at the behest of Respondent/Plaintiff Application-Exhibit-29 for appointment of Court Commissioner came to be allowed, thereby Deputy Superintendent of Land Records came to be appointed as Court Commissioner with a direction to carry out measurement of Gat No.648 and the constructed portion in Gat No.746 and 745 to the extent of 2 R. It is also directed that the area

admeasuring 44.5 R land on the Southern side of the land of the Plaintiff be also measured which has come to the share of the Petitioners/Defendants and in any case if any encroachment is noticed, same be marked in the map.

3] Petitioners/Defendants moved an application Exhibit-49 thereby seeking measurement of Gat No.646, as according to them, there are overlapping boundaries of the area and so as to have clear picture before the court, it was necessary to measure Gat No.646 and other Gat Numbers in its entirety. The said application of the Petitioners came to be rejected vide order impugned dated 23/10/2019.

4] Petitioners feeling aggrieved by the order passed below Exhibit 29 dated 20/4/2019 and order passed below Exhibit-49 dated 23/10/2019 have preferred this Petition.

5] I have heard respective Counsels for some time.

6] Considering the nature of claim in the Plaint i.e. description of the suit property in para 1 and prayer for removal of encroachment,

the order dated 20/4/2019 passed below Exhibit-29, in my opinion, needs to be modified to the extent of carrying out measurement of entire Gat No.746 and 745 and thereafter demarcation of 2 R land of which separate measurement is ordered.

7] As such, it will be appropriate to direct the Court Commissioner to carry out measurement of entire Gat No.746 and 745 and thereafter demarcate the area therein, as has been directed by the Trial Court.

8] Plaintiff and the contesting Defendants/Petitioners shall bear equal costs to be paid to the Court Commissioner.

9] With the above observations, Petition stands disposed of.

(NITIN W. SAMBRE, J.)