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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.659 OF 2022

Munjaji Babanrao Mhatre and Another

PETITIONERS

VERSUS

Rama Munjaji Gagalde and Others

RESPONDENTS

.....

Mr. Shahaji B. Ghatol Patil h/f Mr. U. M. Mhaske Patil, Advocate
for the petitioners

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 13th JANUARY, 2022

ORDER :

1. This petition challenges order passed below Exhibit-23 in Regular Civil Suit No. 15 of 2018 by the learned Joint Civil Judge, Junior Division, Purna, thereby rejecting the application filed by the petitioners – original plaintiffs for appointment of court commissioner, by virtue of Order XXVI, Rule 9 of the Code of Civil Procedure.
2. Heard learned advocate for the petitioners.
3. Admittedly, the suit is filed by the petitioners for simplicitor injunction. It is not the claim of the petitioners that the respondents – defendants have encroached over the suit

property. On the contrary, the pleadings are that the defendants are trying to encroach over the suit property. *Prima facie*, the suit property is in the name of the petitioners – plaintiffs and in that view of the matter, there is no necessity to appointment court commissioner for measurement of the suit property.

4. The Trial Court has, by a well reasoned order, rightly rejected the application Exhibit-23 filed by the petitioners – plaintiffs. There is no illegality or perversity in the order impugned in the writ petition. The writ petition being devoid of merit is dismissed with no order as to costs.

[NITIN B. SURYAWANSHI]
JUDGE