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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO. 5278 OF 2022

RAMCHANDRA DINKAR KOLI AND ORS

....PETITIONERS

V/s.

SHAMRAO ANUT BHOSALE

....RESPONDENT

Mr. Chandrakant P. Yadav Advocate for the Petitioner

CORAM : NITIN W. SAMBRE, J.

DATE: MAY 2, 2022.

P.C.:

- 1) This Petition is by Defendants to R.C.S. No. 86/2017 which is for mandatory injunction, removal of encroachment to the extent of 5R land, possession and injunction.
- 2) Application for appointment of Court Commissioner Exh. 17 came to be allowed vide impugned order dated 16/12/2021 at the behest of Respondent-Plaintiff. As such, this Petition.
- 3) Submissions of counsel for the Petitioners are, the attempt on the part of Respondent-Plaintiff in getting the Commissioner

appointed has to be viewed as an attempt to collect the evidence. So as to substantiate the said claim, he would urge that there is enough public document on record to infer that the land which the Respondent claimed to be in possession of, does not exist on record and as such, the claim itself is sham and bogus. The further contention is, if the Respondent is permitted to collect the evidence, same would be defence of the Petitioner.

4) I have appreciated the said submissions.

5) At this stage, this Court is not required to go into the merits of the Defence of the Petitioner. Suffice it to say that Suit of Respondent-Plaintiff is for removal of encroachment, possession and injunction.

6) It is for the Respondent-Plaintiff to establish his title to the Suit property and in that view of the matter, it cannot be said at this stage that Petitioner cannot be said to have remedy under Order XXVI Rule 9 of Code of Civil Procedure, 1908 for appointment of Court Commissioner.

7) Perusal of Complaint reflects that Respondent has already annexed Complaint map and description of the Property. Once such material is

disclosed, it cannot be said that attempt on the part of the Respondent is to collect the evidence by way of appointment of Court Commissioner as has been argued.

8) Without going into the merits of defence of the Petitioner and his right to cross-examine the Court Commissioner, I hardly see any reason which warrants interference in the extraordinary jurisdiction of this Court.

9) Petition as such fails, stands rejected.

[NITIN W. SAMBRE, J.]