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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO. 1470 OF 2009

NARAYAN MARUTI JAGTAP

....PETITIONER

V/s.

**MAHADEO DNYANDEO NIMBALKAR
AND ORS**

.....RESPONDENTS

Mr. Dilip Bodake Advocate for the Petitioner

Mr. Prakash D. Gharge Advocate for Respondent no. 1

CORAM : NITIN W. SAMBRE, J.

DATE: MARCH 31, 2022.

P.C.:

1) Heard. Order impugned is dated 02/07/2008 whereby under Order XXVI Rule 9 of Code of Civil Procedure, 1908, Court Commissioner was directed to be appointed at the behests of Respondent-Defendant.

2) For making out such case before the Trial Court, it was the contention of the Respondent-Defendant that earlier measurements carried out were not after following due procedure and Rules.

3) As far as the aforesaid issue is concerned, same can be looked into at the time of recording of evidence of rival parties.

4) However, unless it is demonstrated that appointment of Court Commissioner is very much justified, merely for asking the Court below ought not to have appointed the Court Commissioner.

5) That being so, Petition stands allowed. Order impugned dated 02/07/2008 is hereby quashed and set aside. Suit to proceed.

[NITIN W. SAMBRE, J.]