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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO. 442 OF 2022

SHRI. SUBHASH BHIKAJI NEHARKAR PETITIONERS
AND OTHERS

V/s.

SHRI. SHIVAJI TUKARAM BHOR RESPONDENTS
AND OTHERS

Mr. Mohan B. Gawade for the Petitioners

CORAM : NITIN W. SAMBRE, J.

DATE: JANUARY 17, 2022.

P.C.:

1] Order impugned is passed in exercise of powers under Order XXVI Rule 9 of Code of Civil Procedure, 1908 whereby prayer of the Petitioner-Plaintiff for appointment of Court Commissioner for carrying out measurement of the area came to be rejected.

2] Suit is for simplicitor injunction. Defendants have set out defence of possession over the Suit property.

3] In that eventuality, it was open for the Petitioner to get measured partly Suit land and move for consequential relief.

4] That being so, no interference in the impugned order is called for. Petition fails, stands rejected.

5] However, this will not preclude the Petitioner from carrying out independent measurement and placing the same before the Court below during the course of recording of evidence.

[NITIN W. SAMBRE, J.]