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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL WRIT PETITION NO. 5670 OF 2021

VITTHAL DASHRATH DUMBRE

....PETITIONER

V/s.

MAHARASHTRA STATE THR. TAHASILDAR
JUNNAR AND ORS

.....RESPONDENTS

Mr. Uday B. Nighot Advocate for the Petitioner
Mr. C. D. Mali AGP for Respondent nos. 1 to 3
Mr. Namboodiri Prasannan for Respondent nos. 4 to 6

CORAM : NITIN W. SAMBRE, J.

DATE: MAY 2, 2022.

P.C.:

1) Petitioner Plaintiff in a Suit for declaration of ownership and injunction, took out an Application Exh. 58 for appointment of Court Commissioner which is rejected vide order impugned dated 10/09/2018.

2) The submissions of counsel for the Petitioner are, in view of claim of Respondents-Defendants of carrying out development in the Suit property, the Court below ought to have permitted the prayer for

appointment of Court Commissioner. Mr. Nighot would urge that if so permitted on reasonable terms, Petitioner shall comply with same about payment of cost or such other conditions as appointment of Court Commissioner won't amount giving leverage to collect the evidence.

- 3) Counsel for Respondent would support the order impugned.
- 4) Considered submissions.
- 5) Case of the Petitioner-Plaintiff is of settled possession over the Suit property. He has come out with contradictory pleadings that the Respondents-Defendants are developing the land.
- 6) The aforesaid fact has prompted the Trial Court to infer that not only the Petitioner has approached the Court below by suppressing the material fact but has also sought to use the Court proceedings for collection of evidence.
- 7) The view expressed by the Trial Court appears to be in tune with the requirement under Order XXVI Rule 9 of Code of Civil Procedure, 1908. No case for interference is made out. Petition stands dismissed.

8) However, liberty to the Petitioner to move before the Court below for recalling the order of cost.

[NITIN W. SAMBRE, J.]