

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

PRACHI
PRANESH
NANDIWADEKAR

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WRIT PETITION NO.8213 OF 2018

Sau. Alka Bhaskar Auti

.. Petitioner

Versus

Smt. Yamuna Bhima Auti & Anr.

.. Respondents

Mr.U.B. Nighot for the petitioner.

CORAM : ROHIT B. DEO, J.

DATED : 6th JUNE 2022

P.C.:-

. The petitioner is the plaintiff, who has instituted Regular Civil Suit 366 of 2012 *inter alia* seeking injunctive order against the defendant as regards her peaceful possession over the suit property.

2. The petitioner/plaintiff preferred an application for appointing Court Commissioner to measure the suit property Gat 221/3D. By an order dated 15.11.2017, learned trial Judge was pleased to reject the said application.

3. The learned trial Judge has observed that Gat 221/3D is divided into two parts due to Belhe Patilmala Road and that it shall be the burden on the plaintiff to prove that portions on both the sides of

the road are purchased by the plaintiff from the husband of defendant 1. The learned trial Judge then holds that the appointment of the Court Commissioner cannot be made to collect evidence.

4. I am not inclined to interfere with the order impugned. The learned trial Judge is right in holding that the appointment of the Court Commissioner cannot be done for the purpose of collection of evidence. However, it will have to be made clear that after the parties adduce evidence, it shall be open to either party to invoke the provisions of Order XXVI Rule 9 of Civil Procedure Code. Such prayer may be considered on its own merits, if the learned trial Judge finds that any material needs further clarification or elucidation. No observation in the order impugned shall come in the way of either party if an appropriate application is preferred after evidences led.

5. Subject to the observations supra, the petition is disposed of.

ROHIT B. DEO, J.