

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

WRIT PETITION NO.9533 OF 2018

Sadu alias Sahadev Krishna Khutale and Anr. ..Petitioners

Versus

Ramchandra Sakharam Khutale and Ors. ..Respondents

Mr. Chetan G. Patil a/w Mandar Bagkar, for the Petitioners.

Mr. Prajakt M. Arjunwadkar, for Respondent Nos.1, 2, 4 & 5.

CORAM : NITIN W. SAMBRE, J.

DATE : 9th FEBRUARY, 2022

PC.

1. Petitioners in a suit for correction of survey number in sale-deed from 174 to 171 and mandatory and permanent injunction moved application Exh.23 for appointment of Court Commissioner which is rejected vide impugned order dated 18th February, 2017.

2. Mr. Chetan Patil, learned counsel for the petitioners would strenuously urge that the order impugned is not sustainable and calls for interference as the appointment of Court Commissioner prayed for is based on rival claims before the parties. According to him, even if the boundaries mentioned in the sale-deed based on which suit is filed need to be corrected just to establish what was purchased by the petitioners is Survey No.171 and not 174, the appointment of the Court Commissioner is necessary. He would

further claim that such appointment is also in the interest of the respondents and the same will be helpful for proper adjudication of the claims.

3. Prayer made is opposed.

4. Considered submissions.

5. Apart from the fact that the Court Commissioner, in my opinion, will be hardly any assistance in identifying the survey numbers, it will not be out of place to mention that the attempt on the part of the petitioners is nothing less than an attempt to collect the evidence. Keeping option open to the petitioners to lead independent evidence to establish that he has purchased land from Survey No.171 and not 174 by adducing oral and documentary evidence. I see no cause which warrants interference in the extraordinary jurisdiction of this Court.

6. The petition as such fails, dismissed.

[NITIN W. SAMBRE, J.]