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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CIVIL APPELLATE JURISDICTION**

**CIVIL WRIT PETITION NO. 950 OF 2022**

**DAMODAR JAGANNATH PATIL AND ORS      ....PETITIONERS**

**V/s.**

**SAMEER VITHOBA PATIL AND ANR      ....RESPONDENTS**

**Mr. Rakesh Sharad Patil Advocate for Petitioners**

**CORAM :    NITIN W. SAMBRE, J.**

**DATE:      FEBRUARY 28, 2022.**

**P.C.:**

1) R.C.S. No. 89/2020 is initiated by the Petitioner-Plaintiff seeking relief of declaration of ownership and possession over the Suit property, declaration of encroachment by the Respondent-Defendant. Interim temporary injunction is operating in favour of Petitioner restraining Respondent-Defendant from carrying out construction. Petitioner before preferring his affidavit of examination-in-chief took out Application Exh. 27 for appointment of Court Commissioner, alleging that Respondent-Defendant has encroached on his portion and inspite of temporary injunction proceeded ahead

with the construction. So as to ascertain the same, Application Exh. 27 came to be moved which is rejected vide impugned order dated 30/11/2021 by Civil Judge, Junior Division, Pen. As such, this Petition.

2) The contentions of Mr. Patil are, the fact remains that Respondent-Defendant has not obtained sanction from the planning authority and has carried out illegal construction over the property of Petitioner-Plaintiff, inspite of order temporary injunction. That being so, it is necessary to appoint Court Commissioner.

3) I have appreciated the said submissions in the light of reasoning given by the Trial Court.

4) At this stage of the suit, the Trial Court in my opinion is justified in recording a finding that the Petitioner has not made out a case for appointment of Court Commissioner, particularly in the light of the fact that trial in the Suit is yet to commence.

5) Once the Petitioner comes out with a case of construction carried out by the Respondent-Defendant in the property of the Petitioner-Plaintiff in his affidavit of examination-in-chief, based on the same, it is always open for the Petitioner to take out such

Application which can be decided without being influenced by the order passed below Exh. 27 which is impugned in the present Petition. Keeping such right of the Petitioner in tact, in my opinion, no case for interference is warranted. Petition as such stands disposed of with liberty as observed herein above.

**[NITIN W. SAMBRE, J.]**