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

APPEAL FROM ORDER NO. 11 OF 2017

Rekha Omprakash Agrawal
Deceased (Through LRs)
1. Omprakash Sitaram Agrawal
and others.

... Appellants

Versus
Kajal Umang Mehta
and another.

... Respondents

...
Mr.A.P. Bhandari – Advocate for the appellants

...
CORAM : GAURI GODSE, J.
DATE : 12th January, 2023

PER COURT :

1. This appeal is filed for challenging the judgment and order passed by learned Principal District Judge, Jalgaon on 16th December, 2016, thereby setting aside the decree passed by learned trial Court remanding the matter back for deciding afresh. First appellate court has also granted liberty to the plaintiffs for making an application for appointment of Court Commissioner for the purpose of measurement and also granted opportunity to the parties to lead additional evidence, if so they desired.

2. This appeal is preferred by the original plaintiffs on the ground that since the trial court had recorded finding after examining of the evidence on record and issue dealt with by the first appellate court was with respect to the measurement, the court ought not to have remanded matter for deciding it afresh. Thus, learned counsel appearing for the appellants submit that there are substantial questions of law involved in the appeal and hence the appeal requires consideration.
3. I have perused the judgments of both the courts. After considering the evidence on record, the first appellate court has formed an opinion that considering the nature of prayers made in the suit, it was necessary that there should have been remeasurement of the suit property. So far as findings recorded by first appellate court are concerned, the same are with respect to the evidence on record, which concern factual aspects. This appeal from order can be considered only on a substantial question of law. I do not find that this appeal raises any substantial question of law. Hence the appeal is dismissed. Interim relief granted in the matter stands vacated.
4. Learned counsel appearing for the appellants expresses an

apprehension that he may not be allowed to file application as per the liberty granted to him as the liberty was for making application within a period of two months. Needless to mention that the present Appeal From Order was pending in this court and there was an interim order operating during pendency of appeal, hence the time granted by the first appellate court for a period of two months will operate from the date of decision of the present appeal.

5. Learned counsel appearing for the appellants is granted liberty to make an application for expeditious hearing of the suit before the trial Court.
6. Civil application for interim relief is disposed of as infructuous.

[GAURI GODSE]
JUDGE