



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6209 OF 2024

Badrinath Nanasaheb Harkar And Another
VERSUS
Maruti Vishwanath Bodkhe And Others

...

Mr. S. E. Shekade, Advocate for the Petitioners
Ms. R. R. Tandale, AGP for Respondent/State

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CORAM : R.M. JOSHI, J
DATE : JUNE 26, 2024

PER COURT :

1. Petitioners/Plaintiffs takes exception to the impugned order passed below Exh. 68 dated 01.02.2024 in RCS No. 537/2019 whereby application filed by the Plaintiffs for appointment of the Court Commissioner to measure suit property is dismissed.

2. Learned Counsel for the Petitioners submit that having regard to the written statement filed by the Defendant and the evidence which is brought on record before the Court it is just and necessary that the Court Commissioner is appointed for measuring the suit property.

3. Perusal of the plaint shows that the suit is

filed for simplicitor injunction against Defendants in respect of suit property. Admittedly, Defendants have not filed any counter claim in order to consider the positive case sought to be made out by the Defendants. The only issue before the trial Court is as to whether the Plaintiffs are entitled to seek injunction against the Defendants in respect of suit property. For that purpose, the measurement of the property is not necessary. This Court, therefore, finds no perversity in the impugned order of rejection of the application under Order XXVI, Rule 9 of Code of Civil Procedure.

4. In view of the above, Petition stands dismissed.

(R. M. JOSHI, J.)

Malani