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

WRIT PETITION NO. 14296 OF 2023

Baban Sudam Bhilare and Ors.

.. Petitioners

Versus

Kusum Sahebrao Navale and Ors.

.. Respondents

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- Mr. Krushna Jaybhay a/w. Mr. Gourav Shahane, Advocates for Petitioners.

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CORAM : MILIND N. JADHAV, J.

DATE : APRIL 02, 2024.

P.C.:

- 1.** Mentioned at the time of rising of the Court.
- 2.** Heard Mr. Jaybhay, learned Advocate for Petitioners.
- 3.** Present Writ Petition takes exception to the impugned order dated 05.06.2023 passed by the learned Trial Court in Application filed below Exhibit “137”. Application is filed by the Plaintiff under Order XXVI Rule 9 of the Code of Civil Procedure, 1908 (for short “**CPC**”) seeking appointment of Court Commissioner for measurement and determination of the area of the Suit property.
- 4.** Suit is filed for declaration and injunction in the year 2008. Entire witness action is completed and the Suit is presently slated for final hearing before the learned Trial Court. At this juncture, Application seeking appointment of Court Commissioner would

necessarily lead to the Commissioner filing his report and the parties taking turns to cross-examine the Court Commissioner and resultantly leading to gathering of further evidence in law.

5. However, on the strength of the evidence of the parties, if the learned Trial Court desires to appoint the Court Commissioner either at its own discretion or otherwise that would depend upon the facts and circumstances of each case to be ascertained by the Trial Court. In that view of the matter, the impugned order dated 05.06.2023 rejecting the Application below Exhibit “137” is correctly passed and cannot be interfered with.

6. The impugned order dated 05.06.2023 passed below Exhibit “137” is therefore sustained and confirmed. Resultantly, Writ Petition fails and is dismissed.

7. Needless to state that the Suit being of the year 2008, the learned Trial Court is directed by this Court to dispose of the Suit proceedings as expeditiously as possible and preferably within a period of 4 months from today.

8. With the above directions, Writ Petition is dismissed.

[MILIND N. JADHAV, J.]