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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1817 OF 2024**

Arjun Rajaram Ingale and Others ... Petitioners

Vs.

Krushna Shivappa Ingale and Others ... Respondents

Mr. Prajakt M. Arjunwadkar a/w. Mr. Prathamesh S. Hande
for the Petitioners.

Mr. Kirankumar J. Phakade for Respondent Nos. 1 and 2.

CORAM : GAURI GODSE, J.

DATE : 18th JUNE 2025

ORDER :

1. Heard learned counsel for the parties. This petition is filed by the plaintiffs to challenge the order passed by the trial court in exercise of powers under Order XXVI Rule 9 of the Code of Civil Procedure, 1908 ("CPC"), appointing Taluka Inspector of Land Records as Court Commissioner. The trial court has directed the Court Commissioner to conduct a measurement of the suit property along with Gat No. 907 and submit a report showing the exact position of the suit road and construction of defendant No. 2.

2. Learned counsel for the petitioner submits that the trial

court has granted a temporary injunction in favour of the plaintiffs based on the pleadings and evidence on record. He submits that the order of temporary injunction is confirmed by the appeal court. He relies upon the observations of the trial court while granting the injunction. He submits that, only to overreach the findings recorded in the order granting temporary injunction, defendant no. 2 has filed the application for appointment of a Court Commissioner.

3. Learned counsel for the petitioner submits that if the Court Commissioner is appointed and a measurement plan is placed on record, the same is likely to affect the injunction granted in favour of the plaintiffs. He therefore submits that an order for appointing a Court Commissioner could not have been granted, which would amount to overreaching the observations and conclusions recorded in the application for a temporary injunction.

4. I have perused the papers of the petition. The suit is filed for injunction restraining defendant nos. 1 and 2 from carrying out any construction on the suit road and obstructing the plaintiffs' occupation of the suit road. The suit property, i.e. suit road, is described in the plaint as part of Gat No. 907,

and the description is mentioned in the plan annexed to the plaint. Defendant no. 2 has filed the written statement and resisted the suit claim. She has contended that in the sale deed of the plaintiffs, the measurement of the suit property is not mentioned as sought to be described in the plaint. Defendant no.2 further denied that she has carried out any encroachment. Defendant no. 2 claims to have purchased an area admeasuring 1R from defendant no. 1. There is no dispute between the parties that defendant no. 2's construction is part of Gat No. 907, and she claims the right based on the sale deed in her favour.

5. Considering the rival pleadings of the parties, the learned Judge has found it fit to appoint a Court Commissioner to measure the entire Gat No. 907, the suit road, and the position of defendant no. 2's construction. Learned Judge has observed in the impugned order that no prejudice would be caused to the plaintiffs if a Court Commissioner is appointed. Learned Judge has observed that the Court Commissioner's map would assist the court in the proper conclusion of the suit. It is also observed that the plaintiffs would always have the liberty to cross-examine the

Court Commissioner.

6. Considering the rival pleadings of the parties and the nature of the prayers made in the suit, and the dispute regarding the exact location of the suit road and the defendant's number. 2's construction based on their respective documents, I do not see any illegality or perversity in the reasons recorded in the impugned order. The order appointing a Court Commissioner is not conclusive, and the measurement map or the Commissioner's report is always subject to the objections filed by the aggrieved parties, and the objections are bound to be decided by the trial court.

7. The impugned order considers the rival contention of the parties, and the learned Judge has exercised powers under Order XXVI Rule 9 of the CPC on the ground that the Court Commissioner's map would be necessary, as it would assist the court in recording a proper conclusion in the suit. I do not find any illegality or perversity in the reasons recorded in the impugned order. It is not a fit case to exercise powers under Article 227 of the Constitution of India to interfere in the impugned order.

8. The Writ Petition is devoid of any merit. Hence, the writ

petition is dismissed.

9. At this stage, learned counsel for the petitioners relies upon the decisions of this court in the case of *Dhondiram Nivrutti Pawar (D) Through LRS vs. Laxman Khashaba Pawar & Ors.*¹ and *Dnyandeo Vithal Salke and Others vs. Dagdu Kadar Inamdar*². Learned counsel for the petitioners relies upon these decisions to support his submissions that the order appointing a Court Commissioner would not be necessary in the present case. He submits that this court has taken a view that in a suit for a simplicitor injunction, the parties should not be permitted to collect evidence through court machinery.

10. In the decision of *Dhondiram Nivrutti Pawar* this court observed that the respondents had not raised any boundary dispute, and it was not their case that the petitioners had made any encroachment on their land. In the decision of *Dnyandeo Vithal Salke* this court observed that the suit was filed for a simplicitor injunction and there was no prayer for removal of encroachment. Hence, in both decisions, this court was of the opinion that the appointment of a Court

¹ 2018 (3) ALL MR 696

² 2017(5) ALL MR 104

Commissioner was not necessary in the exercise of powers under Order XXVI of Rule 9 of the CPC.

11. In the impugned order, the learned Judge referred to the rival pleadings of the parties. In the present case, the dispute relates to one Gat number, and both parties are relying upon their respective title documents, with reference to the description of the disputed road and the construction made by defendant no. 2 which is part of the same gat number. Considering the dispute involved in the present case, the observations made by this court in both the decisions relied upon by the learned counsel for the petitioners do not support the submissions of the petitioner.

12. For the reasons recorded above, the writ petition is dismissed.

[GAURI GODSE, J.]