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

WRIT PETITION NO. 5051 OF 2012

Mohan Namdev Chavan & Ors.

.. Petitioners

Versus

Dinkar Namdev Chavan

.. Respondent

Mr. Sandeep S,. Salunkhe for petitioners.

Adv. Vrunali Vilankar i/by Tejpal Ingale for respondent.

CORAM: ALOK ARADHE, CJ.

DATE: 15th JULY, 2025

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ORAL ORDER:

1. In this petition filed under Article 227 of the Constitution of India, the petitioners have assailed the validity of the order dated 26th September, 2011 passed by the trial court by which application filed by the defendant seeking appointment of Taluka Inspector, Land Records, Madha as Court Commissioner to measure the suit property and file the report has been allowed.

2. Facts giving rise to filing of the present writ petition, in nutshell, are that petitioners filed Regular Civil Suit No. 243 of 2007 against the respondent seeking relief of permanent injunction as well as to restrain him from causing obstruction and interfere with the possession of the petitioners/plaintiffs in respect of the subject land. In the aforesaid suit, respondent/defendant did not file a counter claim. However,

during the pendency of the suit, the respondent/defendant filed an application praying for appointment of the Court Commissioner. By the impugned order dated 26th September, 2011, aforesaid application has been allowed by the trial court.

3. I have heard the learned counsel for the parties at length.

4. Admittedly, the respondent/defendant did not file any counter claim in the suit filed by the petitioners/plaintiffs. The plaintiffs have to succeed on the strength of their own case and in order to claim a decree, they have to adduce evidence. Filing of the application under Order XXVI Rule 9 of the Civil Procedure Code, 1908, in the facts and circumstances and that too at the instance of defendant is wholly unwarranted. The impugned order, therefore, suffers from the jurisdictional infirmity as well as voice of non-application of mind.

5. In the result, impugned order dated 26th September, 2011 is, therefore, quashed and set aside. Accordingly, the writ petition is disposed of.

6. Let a copy of this order be communicated to the trial court.

(CHIEF JUSTICE)