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

WRIT PETITION NO.11566 OF 2015

Shaikh Mujeebul Hasan Khaja
Abul Hasan

..PETITIONER

VERSUS

Syed Gaus Mohiuddin Gulam
Mohammad Quadri

..RESPONDENT

Mr S.S. Kazi, Advocate for petitioner

**CORAM : N.W. SAMBRE, J.
DATE : 2nd December, 2015**

ORAL ORDER :

By the present petition, the petitioner-original defendant challenges the order dated 2nd November, 2015, passed by 3rd Joint Civil Judge Junior Division, Aurangabad, below Exh.34, in Regular Civil Suit No.244 of 2015, whereby, in exercise of powers under Order XXVI, Rule 9 of the Code of Civil Procedure, Taluka Inspector of Land Records, Aurangabad (for short "T.I.L.R".) came to be appointed as Court Commissioner.

2. In the aforementioned suit, an injunction is sought against the petitioner, in relation to the suit property, from interfering with the possession of the respondent-original plaintiff.

3. A specific instance is narrated by the respondent-plaintiff in the suit,

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qua the act of threats of dispossession by the petitioner-defendant.

4. In the aforesaid background, an application (Exh.34) for appointment of Court Commissioner came to be granted by the impugned order dated 2nd November, 2015.

5. While assailing the impugned order, Mr Kazi, learned Counsel appearing on behalf of the petitioner, would urge that once the suit is for injunction simpliciter, there is no issue as regards appointment of Court Commissioner (T.I.L.R.), for the purpose of identification of the property, as according to him, same amounts to collecting evidence. He would then urge that the cumulative effect of the plaint nowhere prompts the satisfaction of requirements of Order XXVI, Rule 9 of the Code of Civil Procedure and as such, according to him, the order impugned is not sustainable.

6. Perused the reasons furnished by the Court below. Learned Court below was alive of the nature of the claim made in the plaint and the issue as regards identification of the property. The same has prompted the learned Court below to grant application (Exh.34) for appointment of Court Commissioner. The earlier measurement carried out by the Court Commissioner in 2011, as is canvassed by the learned Counsel appearing on behalf of the petitioner, will hardly be of any assistance at this stage, as it is the Court below, which has shown indulgence upon an application to that effect.

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7. In view thereof, no case for interference is made out. Writ Petition, therefore, stands dismissed with no order as to costs.

(N.W. SAMBRE, J.)

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