

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION (ST) NO.3818 OF 2015**

Bapusaheb Anna Patil
deceased through legal heirs
Vivek Bapuso Patil & ors.

...Petitioners

vs.

Pratapgonda Pirgounda Patil & ors.

...Respondents

Mr. Manoj A. Patil for the Petitioners.

CORAM : R. M. SAVANT, J.

DATE : 26th FEBRUARY, 2015.

PC. :-

The writ jurisdiction of this Court is invoked against the order dated 20th January, 2015 passed by the learned District Judge-1, Jaysingpur, by which order the application Exhibit 13 for appointment of the Court Commissioner, at the appellate stage, came to be rejected. The rejection is on the ground that the Suit in question being one for perpetual injunction and in the alternative for possession, the Plaintiff would have to stand on his own legs. The lower Appellate Court would further observe that the Plaintiff would have to prove actual possession over the suit property and if the same is lost, then, he has to prove that on the basis of title he is entitled to receive possession of the said property. The lower Appellate Court, therefore, did not deem it

appropriate to allow the said application Exhibit 13 filed by the original Plaintiff for appointment of the Court Commissioner. The dispute seems to be in respect of about 22 R's of land of which the Plaintiff claims to be in possession. The Suit filed by the Petitioner/Plaintiff has been dismissed against which the Plaintiff is in Appeal. The appointment of the Court Commissioner at the appellate stage can, therefore, only be referable to Order 41 Rule 27 of the Code of Civil Procedure that is as and by way of leading additional evidence. Hence, unless the pre-requisites of the said provision are satisfied, the Plaintiff cannot be permitted to lead additional evidence by way of amendment being carried out by the Court Commissioner. Hence, apart from the ground on which the application has been rejected by the lower Appellate Court, the order can be sustained for the aforestated reason also. The reliance placed by the learned counsel for the Petitioner on the judgment reported in *2014(5) ALL MR 552 in the case of Sulemankhan s/o. Mumtajkhan & Ors. V/s. Smt. Bhagirathibai wd/o Digamber Asalmol & Anr.*, is misplaced as in the instant case, there is no boundary dispute and the issue is whether the Plaintiff is in possession of the suit property. In that view of the matter, no case for interference is made out. The Writ Petition is, accordingly, disposed of.

(R. M. SAVANT, J.)