

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10505 OF 2014

Gopal Babu Khatal	..	Petitioner
VS.		
Appaso Babu Khatal & Ors.	..	Respondents

Mr. Nagesh Y. Chavan for Petitioner.
Mr. Vinod Sangvikar i/b. Mr. Umesh Mankapure for Respondents.

CORAM : M. S. SONAK, J.
DATE: 10 APRIL 2015

P.C. :-

- 1] Upon the motion of Mr. Nagesh Chavan, the learned counsel for the petitioner, the order made on 1 April 2015 is hereby recalled.
- 2] Mr. Chavan, the learned counsel for the petitioner submitted that the dispute in the present case is between family members. In the order, by which the petitioner has been granted temporary injunction, there is reference to encroachment by the defendants. In such circumstances, the application for appointment of court commissioner could not have been rejected. In case if the defendants have any grievance about the report that may be made by the court commissioner, the defendants could always have been afforded the opportunity of cross-examining said court commissioner.
- 3] Mr. Vinod Sangvikar, the learned counsel for the respondents submitted that the suit in the present case seeks permanent

injunction. The suit is not for removal of any alleged encroachment. In such circumstances, there is no scope for appointment of any court commissioner. The impugned order suffers from no jurisdictional error and therefore may not be interfered with.

4] Having heard the learned counsels for the parties and perused the material on record, in my judgment, there is no case made out to interfere with the impugned order. Admittedly, this is not any suit for removal of encroachment. Further, as observed by the learned Civil Judge, the plaintiff - petitioner, has not produced any map indicating the extent of alleged encroachment. In such situation, there is no warrant for appointment of any court commissioner.

5] It is settled position in law that the court commissioners are not to be appointed to assist the parties to the litigation to collect evidence on their behalf. In a situation where the court is of the opinion that such appointment will assist in the effective adjudication of the matter, the court commissioner is to be appointed.

6] There is no jurisdictional error or perversity in approach. Accordingly, no case is made out to interfere with the impugned order. This petition is accordingly dismissed. There shall be no order as to costs.