

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

WRIT PETITION NO.8174 OF 2015

Bhimrao Bajirao Kharade and others

.. Petitioners

Versus

Dhondiram Yashwant Sutar and another

.. Respondents

Mr. S. L. Babar, for the Petitioners

CORAM : R.M. SAVANT, J.

DATE : 15th SEPTEMBER, 2015

PC.

1. The Writ Jurisdiction of this Court is invoked against the order dated 23.07.2015 passed by the Learned Joint Civil Judge Junior Division, Tasgaon, District Sangli, by which order the Application Exh.49 for appointment of the Court Commissioner came to be rejected. The Petitioners are the original Plaintiffs who has filed the suit in question for perpetual injunction on the ground that the Defendants are obstructing their possession over 1.64 Ares of land. The appointment of the Court Commissioner is sought by the Plaintiffs on the ground that the Plaintiffs desire to measure the land admeasuring 1.64 Ares by excluding 0.19 Ares land which is gone in the road in the said Gat No.708. The Trial Court rejected the said application on the ground that there is no dispute about the boundaries between the Plaintiffs and the Defendants and in so far as

0.19 Ares of land is concerned, the case of the Plaintiffs is not consistent as on the one hand they state that land has gone in to the road and on the other hand Plaintiffs state that Defendants are encroaching upon the said portion. The Trial Court was of the view that it is for the Plaintiffs to prove their case by leading cogent evidence and the Court Commissioner cannot be appointed for reporting as regards possession as the same would amount to collection of the evidence through the medium of the Court. In my view, having regard to the well settled principles that are applicable under Order XXVI Rule 9 of the CPC. No case for interference in the Writ Jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed.

[R.M. SAVANT, J]

CERTIFICATE

Certified to be true and correct copy of the original signed
Judgment/Order.