

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

WRIT PETITION (STAMP) NO.24964 OF 2015

Umaji Bhiku Hake

.. Petitioner

Versus

Jagannath Khandu Hake and others

.. Respondents

Mr. M. V. Rawool, for the Petitioner.

CORAM : R.M. SAVANT, J.

DATE : 28th SEPTEMBER, 2015

PC.

1. The Writ Jurisdiction of this Court is invoked against the order dated 10.04.2015 passed by the Learned Civil Junior Division, Phaltan, by which order the application Exh.82 filed on behalf of the Plaintiffs for appointment of the Court Commissioner came to be allowed albeit on the payment of the costs of Rs.700/- to be paid to the other side. The cause for filing the application was the denial of the existence of the well, pipeline as also the dispute about their location. The suit in question is for declaration and injunction, between the parties who are closely related. On the day when the application Exh.82 was heard, both the Plaintiffs and the Defendants were unrepresented. However, the Trial Court proceeded to hear the application and allowed the same by the impugned order implicit in passing of the impugned order is the

acceptance of the fact by the Trial Court that the appointment of the Court Commissioner would result in elucidation of the matter in controversy. The said aspect being the defining aspect in so far as allowing the application for appointment of the Court Commissioner is concerned, as also having regard to the fact that certain parameters have been fixed by the Trial Court for the Court Commissioner whilst carrying out the commission work, in my view, the interdiction of this Court in its Writ Jurisdiction under Article 227 of the Constitution of India is not warranted. The Writ Petition is accordingly dismissed.

[R.M. SAVANT, J]

CERTIFICATE

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