

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

WRIT PETITION NO. 9361 OF 2015

Navnath Bhujanga Kokare & Ors.

..Petitioners

Vs.

Kashinath Sakharam Kokare & Ors.

..Respondents

Mr. P. G. Sarda for the Petitioners

CORAM : R.M.SAVANT, J

DATE : 5th October 2015

P.C. :

1 The Writ Jurisdiction of this Court is invoked against the order dated 15-4-2015 passed by the Learned Joint Civil Judge Junior Division, Mohol, by which order the application Exhibit 35 for appointment of the Court Commissioner, came to be allowed.

2 The Suit in question has been filed for injunction by the Petitioners who are the original Plaintiffs. The subject matter of the Suit is the land bearing Gat No.179. It is the case of the Plaintiffs that the said Gat No.179 is in the eastern corner of Gat No.174. Whereas it is the case of the Defendant Nos.1 to 4 and 7 that the said Gat No.179 is adjoining to Gat No.175. In view of the fact that there is a dispute as regards the location of the said Gat No.179 in respect of which injunction is sought by the Plaintiffs that the Defendants

filed the instant application Exhibit 35 for appointment of the Court Commissioner.

3 The Trial Court has allowed the said application by the impugned order dated 15-4-2015. The Trial Court has adverted to the changes that have taken place pre and post implementation of the consolidation scheme. The Trial Court was of the view that since the dispute in the sense is as regards the location of the said Gat No.179, it would be just and proper to appoint the Court Commissioner. The Trial Court has accordingly appointed the Court Commissioner by the impugned order.

4 The Learned Counsel appearing for the Petitioners / Plaintiffs would question the appointment of the Court Commissioner and having regard to the reasons mentioned therein would contend that the appointment of the Court Commissioner would only result in collecting the evidence through the medium of the Court.

5 In my view, having regard to the reasons which find place in the impugned order, the appointment of the Court Commissioner cannot be found fault with as the report of the Court Commissioner would undoubtedly assist the Court in adjudication of the application Exhibit 5 as also the Suit in question. Hence no case for interference in the Writ Jurisdiction of this Court is

made out, the Writ Petition is accordingly dismissed.

6 Since the application Exhibit 5 is pending according to the Learned Counsel for the Petitioner for more than 1 and ½ years, the Trial Court is directed to hear and decide the same expeditiously.

[R.M.SAVANT, J]

CERTIFICATE

Certified to be true and correct copy of the original signed order