

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

WRIT PETITION NO.9627 OF 2015

Sukumar Gundu Chougule and another	.. Petitioners
Versus	
Shri. Pandurang Laxman Joshi and others	.. Respondents

Mr. U. R. Mankapure, for the Petitioners.

**CORAM : R.M. SAVANT, J.
DATE : 19th OCTOBER, 2015**

PC.

1. The Writ Jurisdiction of this Court is invoked against the order dated 29.08.2015 passed by the Learned District Judge-6, Sangli, by which order the application Exh.7 filed by the Petitioners/original Defendant Nos.1 and 2 for stay of the decree came to be rejected.

2. The suit in question was filed for removal of encroachment of the Defendant Nos.1 and 2 in field Gat No.156 to the extent of 26 Ares. Pending the suit Court Commissioner by way of TILR was appointed. He went on the site and in the presence of the Plaintiffs and the Defendants carried out the measurement of the disputed portion. The Court Commissioner thereafter submitted his report to the Trial Court. The Defendant Nos.1 and 2 i.e. the Appellants herein it seems did not file their

Written Statement and did not adduce any rebuttal evidence against the TILR's report. The suit came to be decreed by the Trial Court by accepting the TILR's report by judgment and order dated 20.06.2015.

3. The aggrieved Defendant Nos.1 and 2 carried the matter by way of Appeal being Regular Civil Appeal No.211 of 2015, wherein they filed the instant application Exh.7 for stay of the decree. In absence of any material placed by the Defendant Nos.1 and 2 to rebut the Court Commissioner's report, the Trial Court was of the view that the stay sought by the Appellants i.e. Defendant Nos.1 and 2 could not be granted as the decree has been passed on the basis of the TILR's report. The other ground urged by the Defendant Nos.1 and 2 that they are co-sharers was also not countenanced by the Lower Appellate Court stating that no such defence was raised before the Trial Court. In my view, having regard to the aforestated facts, the order passed by the Trial Court rejecting the application Exh.7 cannot be found fault with. No case for interference in the Writ Jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed.

[R.M. SAVANT, J]