

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

WRIT PETITION NO.250 OF 2015

Bapurao Raiappa Khavankar : Petitioner
versus
Manik Tatya Nagane and anr. : Respondents.

Mr. Varad Deore for the Petitioner.

CORAM : R. M. SAVANT, J.
DATE : 26th August 2015

P.C.

1 The above Writ Petition takes exception to the order dated 28/6/2014 passed by the learned 4th Joint Civil Judge, Junior Division, Pandharpur by which order the application (Exhibit 26) for appointment of the Court Commissioner came to be allowed and the mandate as contained in clause (2) of the operative part of the impugned order came to be issued to the Court Commissioner.

2 The Petitioner herein is the original Plaintiff who has filed the suit in question being Regular Civil Suit No.14 of 2012. It is the case of the Petitioner/Plaintiff that the Defendants have encroached upon the suit property. The suit property is Gat No.269/1 whereas the land of the Defendants is Gat No.270, both the lands are situated at village Palsi, Tal. Pandharpur, Dist. Solapur. The application (Exhibit 26) is founded on the fact that the Defendants' land are slightly on a higher level than the land of the Plaintiff and

that the Defendants have dug a well in Gat No.270 which is their land. It is the case of the Defendants that the Plaintiff whilst making the allegations that have been made in the plaint have not brought the aforesaid fact on record and it is for the said purpose that the Defendants sought appointment of the Court Commissioner.

3 The Trial Court has allowed the application (Exhibit 26) by observing that since there is a dispute about the Defendants encroaching upon the Plaintiff's property and since on account of the allegations made by the Plaintiff as regards destruction of the bund on the boundary of the property of the Plaintiff and the Defendants, that there is a boundary dispute, the appointment of the Court Commissioner is necessitated.

4 The learned counsel appearing for the Petitioner/Plaintiff Shri Varad Deore sought to contend that the pre-requisites for appointment of Court Commissioner have not been satisfied in the instant case and therefore the appointment of Court Commissioner would lead to collection of evidence through the medium of the Court. The learned counsel for the Petitioner/Plaintiff would contend that it is only in cases where there is boundary dispute that the Court Commissioner can be appointed, however, in the instant case, there is no such dispute and therefore appointment of Court Commissioner is not warranted. In my view, it is not possible to accept the said

submission of the learned counsel for the Petitioner Shri Varad Deore, as it is well settled that to elucidate the matter in controversy a Court Commissioner can be appointed. The facts as afore-stated, in my view, make out a case for appointment of a Court Commissioner as the report of the Court Commissioner would obviously aid the Trial Court in adjudicating the suit in question. In that view of the matter, no case for interference in the writ jurisdiction of this Court is made out. The above Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]