

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

WRIT PETITION NO.1044 OF 2015

Pandit Anandrao Chavan and anr. : Petitioners.

Versus

Sou. Muktabai Bapurao Chavan : Respondent

Mr. Shivaji A Masal for the Petitioners.

CORAM : R. M. SAVANT, J.

DATE : 13th February 2015

P.C.

1 The writ jurisdiction of this Court is invoked against the order dated 17/11/2014 passed by the learned Civil Judge, Junior Division, Khandala, Dist. Satara by which order the learned Judge has deemed it appropriate to appoint a Court Commissioner.

2 In the said order it has been recorded that the Plaintiff is ready to deposit the amount towards the appointment of the Court Commissioner. It has further been recorded in the said order that the Defendants have no objection if the Court deems it appropriate to appoint the Court Commissioner. However, inspite of the said recording made in the order, the learned counsel appearing for the Petitioners i.e. the original Defendants sought to dispute the said recording made in the order. This Court therefore ventured to consider the reason for the Trial Court to appoint the Court Commissioner. It appears that it is during the course of the hearing of the arguments that the Trial Court

felt that to elucidate the matter in controversy, the Court Commissioner is required to be appointed.

3 A perusal of the averments made in the plaint would disclose the geographical location of the Plaintiff's land. It is the case of the Plaintiff that on the boundary of the suit property he has planted trees and it is the case of the Plaintiff that the Defendants have threatening the Plaintiff that the trees would be cut and that the Plaintiff would not be allowed to enter the suit property. The allegations that the Defendants have muscle power etc. have been mentioned. It is not necessary for this Court to enter into the said arena. Hence it appears that with a view to elucidate the matter in controversy, that the Trial Court deemed it appropriate to appoint the Court Commissioner as it feels that the report of the Court Commissioner would aid it in the adjudication of the suit in question. Hence apart from the fact that there is a recording that the Defendants have no objection if the Court deems it appropriate to appoint the Court Commissioner, for the reason that the Trial Court deems it appropriate in the facts and circumstances of the case to appoint the Court Commissioner which it is entitled to do it by taking recourse of Order XXVI Rule 9 of the Code of Civil Procedure. Hence no interference in the writ jurisdiction of this Court is therefore called for with the impugned order. The above Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]