

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

**WRIT PETITION NO.1240 OF 2015**

**Balaram Bango Bhoir and others**

**.. Petitioners**

**Versus**

**Chanderbai Dilip Dalvi and others**

**.. Respondents**

**Mr. Amol P. Mhatre, for the Petitioners.**

**Mr. K. S. Dewal i/by Mr. J. M. Joshi, for the Respondents No.1 to 13**

**CORAM : R.M. SAVANT, J.**

**DATE : 20<sup>th</sup> FEBRUARY, 2015**

**PC.**

1. The order dated 13.01.2015 passed by the Learned 2<sup>nd</sup> Joint Civil Judge, Junior Division, Bhiwandi allowing the application Exh.6A filed by the Plaintiffs for appointment of the Court Commissioner is taken exception to by way of the above Petition. The suit in question being RCS No. 432 of 2014 is filed by the Respondents No.1 to 3 herein for partition. Though the suit has been filed for partition, it is an undisputed position that the Plaintiffs are in possession of Survey No.32/3B admeasuring 69.1 Ares, whereas the Defendants are in possession of Survey No.32/3C admeasuring 70.5 Ares. At the interim stage i.e. at the hearing of the application for temporary injunction, a consensus was arrived at between the parties, whereby they have agreed that would not interfere with the cultivation of each other. The said consensus has been recorded in the

order dated 22<sup>nd</sup> July, 2014 and thereafter the application for injunction came to be allowed in terms thereof by the Learned 2<sup>nd</sup> Joint Civil Judge, Junior Division, Bhiwandi by order dated 17.11.2014. It is also required to be noted that in the written statement filed by the Defendants they have disputed the map filed by the Plaintiffs on the ground that the Plaintiffs are not in possession of the land shown in the map. The Defendants in turn sought to rely upon the map showing their possession as well as the possession of the Plaintiffs. Hence, the factum of the parties being in possession of separate lands is accepted. The instant application Exh.6A has been filed for appointment of the Court Commissioner by way of the Taluka Inspector of Land Records (TILR) so that the boundaries of the lands in occupation of the Plaintiffs and the Defendants can be fixed. In the light of the aforestated facts, the Trial Court reached a conclusion that the appointment of the Court Commissioner by way of Taluka Inspector of Land Records (TILR) will help in the elucidation of the matter in controversy. In my view, having regard to the well settled principles which are applicable to Order 26 Rule 9 of the CPC and having regard to the facts as aforestated, no fault can be found with the impugned order. Hence, no case for interference in the Writ Jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed.

**[R.M. SAVANT, J]**