

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

**WRIT PETITION NO.3551 OF 2015**

**Mahadev Hindurao Patil and anr. : Petitioners**  
**versus**  
**Shahaji Mahadev Thorat**  
**since deceased through his LRs**  
**Smt. Lakshmi Shahaji Thorat and ors. : Respondents.**

**Mr. Wasim N Samlewale for the Petitioner.**  
**Mr. N Y Chavan for the Respondent Nos. 1A to 1F.**  
**Mr. A R Metkari AGP for the Respondent Nos.3 to 5.**

**CORAM : R. M. SAVANT, J.**  
**DATE : 23<sup>rd</sup> September 2015**

**P.C.**

1           The writ jurisdiction of this Court is invoked against the order dated 31/12/2014 passed by the learned 2<sup>nd</sup> Joint Civil Judge, Senior Division, Sangli by which order the Application (Exhibit 75) for appointment of T.I.L.R. Palus, Dist. Sangli for joint measurement of the land bearing Gat No.1354 admeasuring 1 Hector 40 Ares which is owned by the Plaintiff and the land bearing Gat Nos.1352/B and 1353 which are owned by the Defendant No.1 came to be rejected.

2           The suit in question has been filed by the Petitioners Plaintiffs for declaration and injunction. The Defendant No.1 has alleged in the written statement that the Plaintiff has encroached upon his property . It seems that the revenue proceedings being BND Application No.5/2006 had preceded the

filing of the suit in which proceedings an order has been passed by the Sub Divisional Officer directing the Tahsildar, Palus to hand over the encroached portion to the Defendant No.1. The instant suit, as indicated above, has been filed by the Petitioner original Plaintiff seeking declaration in respect of the said order passed in the BND Application No.5/2006 and injunction.

3           The Trial Court has considered the said application and has rejected the same principally on the ground that it is for the Plaintiff to prove his case by adducing oral as well as documentary evidence and since both the Plaintiff and the Defendant had got their respective lands measured in the years 2004 and 2006 there is no warrant to appoint Court Commissioner as appointing the Court Commissioner would only result in collection of evidence through the medium of the Court.

4           In my view, having regard to the reasons mentioned in the impugned order and also having regard to the well settled principles applicable to Order XXVI Rule 9 of the Code of Civil Procedure, 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]**

Certified to be true and correct copy of the original signed Order.