

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

WRIT PETITION NO.6203 OF 2015

**Satish Bapu Jadhav and ors. : Petitioners
versus
Balu Datta Killedar and anr. : Respondents.**

Mr. S S Koregave for the Petitioners.

**CORAM : R. M. SAVANT, J.
DATE : 03rd September 2015**

P.C.

1 The writ jurisdiction of this Court is invoked against the order dated 23/02/2015 passed by the learned 10th Joint Civil Judge, Junior Division, Kolhapur by which order the Application (Exhibit 37) for appointment of the Court Commissioner filed by the Petitioners came to be rejected.

2 The Petitioners are the original Plaintiffs who have filed the suit in question being Regular Civil Suit No.359 of 2014 for removal of encroachment. It is the case of the Plaintiffs that the Defendants have removed the old compound wall and in the guise of putting up a new compound wall has encroached upto 8 ft. into the property of the Plaintiffs. The Plaintiffs have sought removal of the encroachment.

3 It appears that on an earlier occasion the application filed by the

Plaintiffs for appointment of Court Commissioner was rejected. It seems that thereafter the Plaintiffs attempted to get the measurement done through the Government Surveyor, however, the same was opposed to on behalf of the Defendants and hence the survey could not be carried out. The Plaintiffs have thereafter filed the instant application.

4 The Trial Court has rejected the said application on the ground that the Plaintiffs can get the land measured through a private surveyor and can also adduce evidence to prove the encroachment carried out by the Defendants. It is required to be noted that the suit is of the year 2014. Hence the Plaintiffs can attempt to get the land measured privately and file the said report in the Trial Court.

5 In my view, for the reasons mentioned in the impugned order, no case for interference in the writ jurisdiction of this Court is made out. However, it would be open for the Trial Court, if at a later stage the necessity of appointment of the Court Commissioner arises, to appoint the Court Commissioner and the mere fact that the applications filed by the Plaintiffs were rejected on the earlier occasions would not be an impediment for the Trial Court to do so. With the aforesaid observations, the above Writ Petition is dismissed.

[R.M.SAVANT, J]