

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7986 OF 2013**

Parmeshwar Krushna Mulik

..Petitioner

Vs.

Popat Krushna Mulik & Ors.

..Respondents

Mr. Ashok Tajane for the Petitioner

**CORAM : R. M. SAVANT, J.
DATE : 3rd FEBRUARY, 2015**

P.C.

1 The Writ Jurisdiction of this Court is invoked against the order dated 29-1-2013 passed by the Learned Civil Judge Junior Division, Karmala, by which order the application Exhibit 41 filed by the Plaintiff i.e. the Petitioner herein for appointment of the Court Commissioner, came to be rejected.

2 The Petitioner herein is the original Plaintiff who has filed the Suit in question being Regular Civil Suit No.144 of 2012 for declaration and perpetual injunction. It is the case of the Plaintiff that he has an easementary right of way which goes through from the boundary between block No.482/6 and block No.492/1-A having 12 feet width and 600 feet length up to the canal situated at North side of both the properties. It is further his case that there is no alternative road as and by way of access to the Suit land. The Defendants in the Suit have denied the existence of the said way. It is the case of the

Defendants that there is a narrow path way having 1.5 feet width, hence to resolve the controversy that the Plaintiff has filed the instant application for appointment of the Court Commissioner.

3 The Trial Court has rejected the said application on the ground that the appointment of the Court Commissioner to report as regards the existence of the disputed way would amount to collection of evidence through the medium of the Court. The Trial Court has observed that it is for the Plaintiff to adduce appropriate evidence in respect of the existence of the disputed way and his right to use that way.

4 In my view, having regard to the reasons mentioned in the impugned order, no case for interference in the Writ Jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed.

5 Needless to state that the Suit in question i.e. Regular Civil Suit No.144 of 2012 would be tried on its own merits and in accordance with law.

[R.M.SAVANT, J]