

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.10508 OF 2013**

Dattatray Shankar Lad & Ors.	...Petitioners
vs.	
Ramchandra Dhondi Kenjale & Ors.	...Respondents

Mr. Vaibhav R. Gaikwad for the Petitioners.
Mr. Kiran Kumar J. Phakade for the Respondent Nos.1 to 4 and 6.

CORAM : R. M. SAVANT, J.

DATE : 26th FEBRUARY, 2015.

PC. :-

The writ jurisdiction of this Court is invoked against the order dated 19th July, 2012, passed by the learned Civil Judge, Junior Division, Koregaon, by which order the application Exhibit 80 came to be allowed and Advocate Shri M. S. Shedge was appointed as a Court Commissioner with a mandate, which appears in paragraph 3 of the impugned order dated 19th July, 2012. In view of the fact that the commission work could not be carried out, an application being Exhibit 88 came to be filed by the Court Commissioner and as a consequence of which the Court Commissioner was directed to be granted police aid as per Rules. The facts, therefore, disclose that the Court Commissioner who has been appointed vide the application Exhibit 80 has not been allowed to carry out the commission work and report in respect of the

matters of which a mandate appears in clause (3) of the operative part of the impugned order dated 19th July, 2012. The background to the application Exhibit 80 being filed seems to be the fact that the report submitted by the Court Commissioner appointed earlier, was not satisfactory as the boundaries of the properties were not properly mentioned in the said report.

2] With the assistance of the learned counsel for the parties, I have perused the said Court Commissioner's report and find substance in the case of the Respondents herein i.e. the Defendants that the boundaries have not been properly mentioned in the report submitted by the Court Commissioner who was appointed on the earlier occasion who was an advocate. It is well settled that to elucidate the matter in controversy, a Court Commissioner can be appointed. Having regard to the dispute which is the subject matter of the Suit in question, that the Trial Court deemed it appropriate to appoint the Court Commissioner vide the impugned order dated 19th July, 2012. The fact that the Court Commissioner has not been permitted to carry out the commission work is exemplified by the application Exhibit 88 by the Court Commissioner for police aid. Hence, this Court does not find any reason to interfere with the impugned order passed by the Trial Court appointing the Court Commissioner.

3] However, in my view, it would be just and proper to direct the

Taluka Inspector of Land Records to carry out the commission work as it is better that a technical person does the work as otherwise the adjudication of the suit would be unduly delayed. Hence, though the impugned order dated 19th July, 2012 as also the order dated 18th June, 2013 is not interfered with, it is directed that instead of the learned Advocate, the TILR from the office of Collector, Satara, to carry out the commission work. The same to be done within eight weeks from date. An authenticated copy of the instant order be produced before the Resident Deputy Collector, Satara, who would forward the same to the concerned TILR, who is to carry out the commission work. The expenses of the commission work to be borne equally by the Plaintiffs and the Defendants. With the aforesaid directions, the Writ Petition is disposed of.

(R. M. SAVANT, J.)