

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

**WRIT PETITION STAMP NO.30892 OF 2014
WITH
CIVIL APPLICATION STAMP NO.30894 OF 2014**

**Immacus P Dias and anr. : Petitioners
versus
Babu Antu Ambhore and ors. : Respondents.**

Mr. Clifford Martis for the Petitioners.

**CORAM : R. M. SAVANT, J.
DATE : 07th January 2015**

P.C.

1 The writ jurisdiction of this court is invoked against the order dated 30/10/2014 passed by the learned Civil Judge, Junior Court, Vadgaon, Maval by which order the Application (Exhibit 155) for appointment of Court Commissioner came to be rejected.

2 It is required to be noted that the suit in question is at the stage of final arguments. The Petitioners who are the original Plaintiffs have examined as many as 9 witnesses amongst whom was the surveyor who has carried out the measurement in the year 2008. The Petitioners/Plaintiffs have filed the instant Application (Exhibit 155) for appointment of Court Commissioner to find out the suit property in respect of which the alleged encroachment is carried out by the Defendants.

3 The Trial Court has rejected the Application (Exhibit 155) on the ground that the said Application, if allowed, would result in the evidence being collected through the medium of the Court. As indicated above the Petitioners/Plaintiffs have examined as many as 9 witnesses and thereafter when the suit in question was kept for final arguments that the instant Application came to be filed.

4 Having regard to the relief sought in the suit and the description of the property which has been mentioned in the suit, the observation of the Trial Court whilst rejecting the Application, that the same if allowed, would result in collection of evidence through the medium of Court cannot be found fault with. No case for interference in the writ jurisdiction of this Court is made out. The above Writ Petition is accordingly dismissed. In view of the dismissal of the above Writ Petition, the above Civil Application Stamp No.30894 of 2014 does not survive and the same to accordingly stand disposed of as such.

[R.M.SAVANT, J]