

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

**WRIT PETITION STAMP NO.33197 OF 2014**

**Sanjay Manohar Chikhale and ors. : Petitioners.**

**Versus**

**Babaso Parisaa Labaje and ors. : Respondents.**

**Mr. Chetan G Patil for the Petitioners.**

**CORAM : R. M. SAVANT, J.**

**DATE : 14<sup>th</sup> October 2015**

**P.C.**

1           The writ jurisdiction of this Court is invoked against the order dated 16/09/2014 passed by the 2<sup>nd</sup> Joint Civil Judge, Senior Division, Kolhapur by which order the Application (Exhibit 45) for impleadment filed by the Petitioners herein under Order I Rule 10 of the Code of Civil Procedure came to be rejected.

2           The suit in question has been filed by the Plaintiffs for declaration that the proceedings initiated by the Defendants before the Tahsildar under Section 5 of the Mamlatdar's Court Act are illegal, void etc. The dispute seems to be in respect of the right of way through the land of which the Plaintiffs claim the ownership. The Petitioners herein who are the Applicants in the said Application (Exhibit 45) have founded the said application on the fact that they are using the said right of way which is the subject matter of the proceedings before the Tahsildar.

3           The Trial Court has rejected the said Application (Exhibit 45) on the ground that if the Applicants have any claim in respect of the said right of way, they are free to adopt independent proceedings to assert the right if any which they claim over the right of way.

4           In my view, since the Defendants who are allegedly using the way are already party Defendants to the suit, the presence of the Applicants is not necessary in the present suit. However, as observed by the Trial Court, it is always open for the Applicants to adopt independent proceedings to assert the right if any which they claim over the right of way. With the aforesaid observations, the above Writ Petition is dismissed.

**[R.M.SAVANT, J]**