

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.587 OF 2015**

Chandrakant Nanasaseb Kadam : Petitioner.
Versus
Executing Engineer, Construction Department
Central Building, Pune and ors. : Respondents.

Mr. V M Thorat, i/by Mr. Sachin B Thorat for the Petitioner.
Mr. S D Rayrikar, AGP for the Respondent No.3.

CORAM : R. M. SAVANT, J.
DATE : 28th January 2015

P.C.

1 The writ jurisdiction of this Court is invoked against the order dated 4/12/2014 passed by the learned Civil Judge, Senior Division, Khed, Rajgurunagar, Dist. Pune by which order the application (Exhibit 42) filed by the Petitioner original Plaintiff for appointment of the Court Commissioner came to be rejected.

2 The suit in question being Special Civil Suit No.243 of 2014 has been filed by the Plaintiff for removal of encroachment and for handing over the vacant possession of the encroached portion to the Plaintiff. It appears that the measurement of the suit property through the Cadestral Surveyor has already been carried out by way of MR No.4269/13 on 14/1/2014. However, in view of the stand taken by the Defendants i.e. the governmental authorities in the affidavit in reply filed to the Application (Exhibit 5), viz. that there is no joint measurement, that the instant Application (Exhibit 42) seems to have

been filed by the Plaintiff.

3 The Trial Court adverted to the well settled position in law as enunciated by the judgments which have been referred to in the impugned order and held that the Court Commissioner can obviously not be appointed for collection of evidence at the behest of the Court. The Trial Court observed that since there is also Cadestral Surveyor's map on record, it is for the Plaintiff to lead cogent evidence and prove the allegations against the Defendants of encroachment being carried out. As indicated above, the reasons for filing of the application seems to be the stand taken by the Defendants while opposing the Application (Exhibit 5). However, in so far as the instant Application (Exhibit 42) is concerned, the Defendants have taken a stand that since there is already a report of the Cadestral Surveyor, there was no need for appointment of a Court Commissioner.

4 In my view, having regard to the reasons mentioned in the impugned order, no case of interference in the writ jurisdiction of this Court is made out. The above Writ Petition is accordingly dismissed. It would always be open for the Plaintiff to prove by leading cogent evidence the factum of encroachment made by the Defendants, which would include placing reliance on the Cadestral Surveyor's report.

[R.M.SAVANT, J]