

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.6850 OF 2015

Rajendra Vasantrao Deshmukh

-vs-

Ramvijay Krushnarao Alone

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri S. S. Shingane, Advocate for petitioner.

CORAM : A.S.CHANDURKAR, J.

DATE : December 18, 2015

In a suit for injunction simplicitor, the petitioner who is the original plaintiff sought appointment of Court Commissioner for measuring the field gat Nos.212 and 216. This application was rejected by the Trial Court on the ground that considering the nature of reliefs sought in the suit, it would amount to collecting evidence.

Shri S. S. Shingane, learned counsel for the petitioner by relying upon judgment in *Tajmulhussain Mulla Mumtaz Hussain Vs. Satish Bhanudas Chavan 1994(1) Mh.L.J. 664* submitted that the Trial Court ought to have considered the said application and allowed the same.

The suit as filed is for injunction simplicitor. The trial Court has not found it necessary to have assistance of the report of the Court Commissioner. In that background therefore, it cannot be said that the Trial Court committed any error in rejecting the application filed below Exhibit-24. It is always open for the

petitioner to have the field in question measured through an expert and lead evidence in that regard. The observations made in *Tajmulhussain Mulla Mumtaz Hussain* (supra) relied upon by learned counsel for the petitioner proceed on the basis of the facts therein where both the parties had measured the suit property and had placed their respective maps on record. It was in that background that appointment of Commissioner was found justified in said case.

Considering the facts of the present case especially when the suit is for injunction simplicitor, the Trial Court did not commit any jurisdictional error in rejecting the application. The writ petition is therefore dismissed with no order as to costs.

JUDGE