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

WRIT PETITION NO. 11275 OF 2016

Mr. Shivajirao Gauranna Yesumali. ... Petitioner.

V/s.

Mr. Subhash Anna Mali. ... Respondent.

Mr. S.C. Wakankar i/b. Mandar Limaye for the Petitioner.

CORAM : N.M. Jamdar, J.

29 September, 2016.

Oral Order :-

Not on board. Taken on production board by way of praecipe.

2. By this Petition the Petitioner challenges the order passed by the learned Civil Judge, Junior Division, Miraj appointing a Court Commissioner.

3. Heard the learned Counsel for the Petitioner. The suit filed by the Respondent – Plaintiff is for removal of alleged encroachment. The learned Counsel for the Petitioner submitted

that earlier application was rejected which order is not challenged and that the Respondent – Plaintiff has sold the part of the property. The learned Civil Judge in exercised its jurisdiction, in the facts of the case, to aid the adjudication has decided to appoint a Court Commissioner. The discretion is used is in consonance with the law laid down by this Court that the appointment of the Court Commissioner is generally necessary for resolution of boundary disputes. This exercise cannot be defeated by invoking the principle of *res-judicata* for such interlocutory orders. As far as the other submissions of the learned Counsel for the Petitioner are concerned, it is not that moment the report of the Court Commissioner is filed, it will be accepted in toto. The learned Civil Judge will no doubt hear both the sides and their objection to the report and then decide whether to rely upon the report and proceed with the trial.

4. In the circumstances, no interference is warranted. The Writ Petition is rejected.

(N.M. Jamdar, J.)