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

WRIT PETITION NO. 11817 OF 2015

Smt. Chhaya Ganpati Bharati

...Petitioner

Vs.

Vikas Sitaram Jangle & Anr.

...Respondents

Mr. Nagesh Y. Chavan, Advocate for the Petitioner
None for the Respondents

**CORAM : M.S. KARNIK, J.
DATED : 2nd APRIL, 2016**

P.C. :

1. The Petitioner by way of present Petition challenges an order passed by the learned Joint Civil Judge (J.D.) Miraj, District: Sangli below Exhibit-18 in Regular Civil Suit No.250 of 2015. The Petitioner, the original Plaintiff had filed the Suit for permanent injunction. According to the Petitioner he is the owner of the Final Plot No.95/2 admeasuring 11R out of Survey No.795A/1A/3A/1/1 alongwith a standing structure of a shed of tin sheet admeasuring 500 sq. ft alongwith electricity connection more particularly described in plaint para 1. According to the Petitioner the Respondents are trying to develop a temple which is close to the Petitioners property. The Respondents are trying to construct some structure over an adjacent plot and for that purpose they have dumped the raw-material on the way which the Petitioner is

using for access to his property. The Respondents are also trying to encroach upon the cart-road and trying to shut down the Petitioner's access to the suit property.

2. The Petitioner filed an application Exhibit-5 for injunction. By an order dated 13th August, 2015 the learned trial Court was pleased to direct both the parties to maintain status-quo.
3. The Petitioner by an application at Exhibit-18 submitted that for bringing the exact fact and position of the encroachment on the way / road used by the Petitioner for access to the suit property and also for bringing on record the obstructions made by the Respondents over the road a Court Commissioner may be appointed.
4. The Respondents by filing a detailed say opposed the said application.
5. The learned trial Court by the impugned order was pleased to reject the application by an order dated 30th October, 2015 passed below Exhibit-18. This order is challenged by way of the present Petition.
6. The learned Counsel for the Petitioner argued that the Respondents are obstructing his access to the suit property.

The map is attached along with the plaint. There is one cart-way, which the Petitioner has been using. The Respondents are trying to raise construction and in furtherance of that, construction materials like stones, bricks, sand and cement etc. are being collected. Due to the construction by the Respondents there is obstruction to the Petitioner's use of cart-way. In these circumstances the Petitioner contends that in order to bring on record all these factual details the appointment of Court Commissioner is necessary and therefore, the learned trial Court was not justified in rejecting the application for appointment of the Court Commissioner.

7. On the other hand the learned Counsel for the respondents argued that as per Order 26 Rule 9 there is no need to appoint Court Commissioner in the suit which is filed simplicitor for injunction. The Respondents have not raised any construction or encroached in the suit property. It is further argued that the Petitioner has to establish his right by documentary as well as oral evidence. He further submitted that the Court Commissioner cannot be appointed to collect evidence.

8. In my view the learned trial Judge has correctly held that at this stage there is no necessity to appoint Court Commissioner. Based on documentary evidence and other material it is for the Petitioner to show existence of prima

facie case and entitlement to interim injunction order. It appears that the Petitioner has filed an application for appointment of the Court Commissioner so as to enable him to collect material for arguing Exhibit-5 application for injunction.

9. In this view of the matter I find no error in the order dated 30th October, 2015 passed by the learned trial Judge so as to interfere in the exercise of writ jurisdiction under Article 227 of the Constitution of India.
10. The Writ Petition is accordingly dismissed with no order as to costs.

(M.S. KARNIK, J.)