

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

WRIT PETITION NO.6828 OF 2015

Mr. Shivaji Punjaji Aher

... Petitioner

Vs

Smt. Mangal Raibhan Aher

... Respondent

...

Mr. Sandeep Barve a/w Preshit Bagol i/b. B. K. Barve & Co. for the
Petitioner.

Mr. Pravartak Pathak for the Respondent.

CORAM : M. S. SONAK, J.

DATE :24 NOVEMBER, 2017

P.C. :

1. Heard Mr. Sandeep Barve, for the Petitioner and the Pravartak
Pathak for the Respondent.

2. This Petition challenges the Order dated 25th June 2015 below
Exh. 35 in Regular Civil Suit No. 162 of 2014, by which the learned Trial
Judge, has dismissed the petitioner's application seeking appointment of
Court Commissioner.

3. Mr. Barve, the learned counsel for the Petitioner submits that
this is not a case for seeking appointment of Court Commissioner to gather
evidence. He points out that there is an issue of one well and electricity
connection taken for. He submits that, if a Court Commissioner is

appointed to report the situation of the suit, the same will assist not only the Petitioner but also the Respondent. He submits that such appointment and consequential report of the Commissioner will assist the Court itself in determining the issues which arises in the suit. For these reasons, he submits that the impugned order be set aside and the application at Exh. 35 be made absolute.

4. Upon due consideration of the submission made and perusal of the record as well as the impugned order itself, I find that there is no jurisdictional error in the impugned order. The dispute between the parties basically relates to possession. Both parties claimed to be in possession of the suit property. In such a situation, the learned Trial Judge has rightly observed that no useful purpose will be served by appointing a Commissioner. It is a settled position that Court Commissioner cannot be appointed to collect evidence for any of the parties. The parties are at liberty to lead their own evidence.

5. For the aforesaid reasons, this petition is dismissed. There shall be no order as to costs.

(M. S. SONAK, J.)