

2. Mr. Chate, the learned counsel for the petitioner fairly concedes that the appeal filed by the petitioner before the District Court against the order of rejection of application for appointment of Court Commissioner was not maintainable. The learned counsel further submits that, the Trial Court did not

consider the requirement of measurement. If the measurement is carried out by an expert, it would assist the Court for arriving at just conclusion. According to the learned counsel reasons are given in the application for measurement. The learned counsel submits that the application is not for collecting evidence, but to bring on record the existing situation.

3. The suit is for simplicitor injunction and not for possession or removal of encroachment, nor there is any dispute with regard to boundaries. The petitioner has already got benefit of order of temporary injunction. The application given by the petitioner (Exhibit 19) also does not disclose any reason, which would inspire confidence in the Court to appoint Court Commissioner.

4. The Trial Court has not committed any error while rejecting the application. In the light of that, the writ petition is disposed of. No costs.

[S. V. GANGAPURWALA, J.]

bsb/Jan. 19