

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7072 OF 2019

Shri Shamrao Narayan Dusane	.. Petitioner
Vs.	
Shri Vasant Khandu Nimse and anr.	.. Respondents

Mr.Girish R.Agrawal, for the Petitioner.
Mr.Rahul Soman, for the Respondent No.1.

CORAM : M.S.KARNIK, J.

DATE :19th SEPTEMBER 2019

P.C. :

. Heard learned Counsel for the petitioner.

2. By this Petition, the petitioner is challenging the order passed by the trial Court below Exhibit 101 rejecting the application made by the plaintiff for appointment of the Court Commissioner. The petitioner – original plaintiff filed Suit for removal of encroachment and fixation of boundaries. The trial Court by order dated 25/09/2012 appointed Court

Commissioner to measure the suit premises. The Court Commissioner submitted the report. Both the parties disputed the report. The plaintiff therefore filed a fresh application Exhibit 101 for appointment of T.I.L.R. as a Court Commissioner. The said application is rejected. I am informed that the Court Commissioner who had submitted the report pursuant to the order passed below Exhibit 53 is already examined. The trial is at the stage of recording of evidence of the parties.

3. In this view of the matter, I am not inclined to interfere with the impugned order. However, after the evidence is recorded, if an application is filed by the plaintiff for appointment of the Court Commissioner, the trial Court shall consider the said application on its own merits without being influenced by the earlier order.

4. Subject to above, Petition is rejected.

(M.S.KARNIK, J.)