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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.13809 OF 2018

Nabaji Mahipati Bhor

..Petitioner.

V/s.

Bhagwan Muktta Shinde

..Respondent.

Mr.Ashok M. Misal for the petitioner.

Mr.Rohan Barge for the respondent.

CORAM : M.S.SONAK, J.

DATE : APRIL 15, 2019

P.C.:-

Heard Mr.Misal, learned counsel for the petitioner and Mr.Barge, learned counsel for the respondent.

2. Challenge in the petition is to the order dated January 1, 2018 by which learned trial Judge has dismissed the petitioner's application seeking appointment of Court Commissioner.

3. Mr.Misal, learned counsel for the petitioner submits that this is a fit case for appointment of a Court Commissioner because the report of the Court Commissioner will enable the learned trial Judge to adjudicate upon the real controversy between the parties. He relies upon the decision of this Court in the case of *Kolhapur Banbdu Lakade V/s. Yallappa Chinappa Laskade Decd. Through Poja @ Poojari Y.Lakade and others [Writ Petition No.6497 of 2009 decided on March 14, 2011]* in support of his

contention.

4. Mr.Barge, learned counsel for the respondent defends the impugned order on the basis of reasoning reflected therein.

5. Upon consideration of the rival contentions and perusal of the impugned order, I am satisfied that no case has been made out which warrants interference in the impugned order to exercise supervisory jurisdiction of this Court under Article 227 of the Constitution of India.

6. In this case, the plaintiff has instituted the suit for mandatory injunction in relation to some trees and dispute is whether the tree in the plaintiff's property are taller or the trees of defendant's property. According to me, resolution of such dispute by appointing Court Commissioner is not at all necessary as has been observed by the learned trial Judge. It is for the parties to lead their own evidence in such matters. The purpose of appointing a Commissioner is not to collect evidence for either of the parties.

7. Besides, these are discretionary powers and it cannot be said that the learned trial Judge has exercised discretion in an unreasonable manner. The decision in the case of *Kolhapur Banbdu Lakade (supra)*, therefore, cannot be said to be of any assistance to the petitioner.

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

(M.S.SONAK, J.)