

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

WRIT PETITION NO.13331 OF 2017

Vilas Motiram Bhalerao ... Petitioner
Vs.
Shantaram Fakira Bhalerao & Ors. ... Respondents
.....
Mr. Swapnil V. Walve for the petitioner.
Mr. S.S. Panchpor, AGP for State/respondent Nos.6 & 7.
.....

CORAM : M. S. KARNIK, J.

DATE : 17th SEPTEMBER, 2019.

P. C.:

1. Heard learned counsel for the petitioner.
2. The petitioner is the original plaintiff. The plaintiff had filed a suit for declaration and injunction. After the evidence of the plaintiff was recorded, the plaintiff filed an application below Exhibit 53 for appointment of the Court Commissioner. Learned counsel for the petitioner submitted that the appointment of the Court Commissioner is necessary to bring the actual situation of the suit property on record. Further he would submit that the suit itself is for declaration that the measurement carried out on 18.11.2002 is illegal. The Trial Court rejected the

application by observing that it is for the plaintiff to prove his possession over the suit property. The Trial Court further observed that the Court Commissioner can not be appointed to collect evidence.

3. At this stage, I see no reason to interfere with the order passed by the Trial Court as the evidence is yet to be recorded. However, after the evidence is recorded, if the application is made by the plaintiff for appointment of the Court Commissioner, the Trial Court may consider the said application on its own merits.

4. With these observations, the petition is rejected.

(M. S. KARNIK, J.)