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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4808 OF 2022

Shaikh Abdul Razzaq Shaikh Chand

PETITIONER

VERSUS

Prakash Kishan Gore and Others

RESPONDENTS

.....

Mr. Hamzakhan I. Pathan, Advocate for the petitioner

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 28th APRIL, 2022

ORDER :

1. Petitioner's application for appointment of court commissioner is rejected by the trial court on the ground that the petitioner is trying to collect evidence by seeking appointment. The petitioner is aggrieved by the said order.
2. The petitioner has filed the suit for measurement and fixation of boundaries of the suit property and for perpetual injunction.
3. According to the petitioner – plaintiff, he is the owner and he is in possession of the suit property.
4. Learned advocate for the petitioner fairly concedes that the

suit is at preliminary stage and yet the application for temporary injunction (Exhibit-5) is also not decided.

5. In the light of the above facts, this court is of the view that the parties will have to *prima facie* establish their case by leading evidence and thereafter, if necessary, application can be filed for appointment of court commissioner. If such application is filed, the trial court shall decide the same at that stage, on its own merits, in accordance with law and without being influenced by the order passed below Exhibit-28.

6. With aforesaid observations, the writ petition is disposed of.

[NITIN B. SURYAWANSHI]
JUDGE