

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

WRIT PETITION NO.2475 OF 2022

Ankush Dattatray Jagtap

..Petitioner

Versus

Rohit Rajendra More and Ors.

..Respondents

Ms. Gauri Surel Shah, for the Petitioner.

CORAM : NITIN W. SAMBRE, J.

DATE : 9th MARCH, 2022

PC.

1. Prayer for appointment of Court Commissioner of the petitioner/defendant is rejected in a suit for simplicitor injunction based on title.

2. The contentions are, to identify the suit property, it is necessary to appoint Court Commissioner before the application Exh.5 is decided.

3. My attention is invited to the schedule of property mentioned in the plaint, so also the one mentioned in the suit being RCS No.588 of 2017. It is claimed that all these properties are different and as such, it is necessary to appoint Court Commissioner to identify the correct property.

4. As far as the aforesaid submission is concerned, Court below while deciding prayer of injunction will be appreciated the same on the basis of evidence and affidavits of the parties.

5. For the said purpose, recourse to Article 226 of the Constitution of India cannot be taken when trial is at the stage of deciding application Exh.5. No case for interference in the extraordinary jurisdiction of this Court is made out.

6. The petition as such fails, dismissed.

7. However, this will not preclude the petitioner from moving afresh once the trial is commenced.

[NITIN W. SAMBRE, J.]