

VRJ

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

WRIT PETITION NO.15727 OF 2023

VAIBHAV
RAMESH
JADHAV
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Date: 2023.12.20
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Arjun Dattatray Ghadge

... Petitioner

V/s.

Vimal Sudam Ghaste & Anr.

... Respondents

Mr. Sandeep Koregave with Ms. Pallavi A. Karanjkar for
the petitioner.

CORAM : AMIT BORKAR, J.

DATED : DECEMBER 19, 2023

P.C.:

1. The petitioner is plaintiff in a suit for removal of encroachment. The Trial Court appointed Court Commissioner to measure the suit properties. The Court Commissioner submitted his report. According to the petitioner, during examination-in-chief the Court Commissioner has given contradictory statements. Therefore, according to the petitioner, fresh appointment of the Court Commissioner is necessary. In so far as fresh appointment of Court Commissioner is concerned, the Trial Court is having entire evidence before him and unless the Court comes to the conclusion that such appointment based on evidence is necessary for effectual adjudication of suit, the application cannot be allowed. Such course can be adopted before the Appellate Court before whom the Court has liberty to go through entire evidence. Hence, rejection of

appointment of Court Commissioner at this stage cannot be faulted.

2. In so far as judgment in the case of **Haryana Waqf Board VS. Shanti Sarup and Others** reported in (2008) 8 SCC 671 is concerned, the Court in the facts of the case, thought it fit to appoint Court Commissioner. No absolute preposition of law is laid down, hence, the judgment is of no help to the petitioner.

3. The writ petition is, therefore, dismissed. No costs.

4. However, it will be open for the petitioner to raise such contention before the Appellate Court in case the suit is decided against the petitioner.

(AMIT BORKAR, J.)