

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5326 OF 2024**

Baliram Bhiku Shinde Through P.A.H. Vikas	..Petitioner
Baliram Shinde	
Versus	
Bajirao Hari Shinde & Anr	...Respondents

Mr. Rushikesh C. Barge, for the Petitioner.
None for the Respondents.

CORAM: N. J. JAMADAR, J.
DATED : 26th FEBRUARY 2025

P.C.:

1. Heard learned Counsel for the petitioner.
2. The challenge in this Petition is to an order dated 12th September 2022 passed by the learned District Judge, Satara, whereby an application preferred by the petitioner in Regular Civil Appeal No. 122 of 2022 for appointment of the Court Commissioner to measure the suit land, fix the boundaries thereof and place on record the situation of the structure, including the age thereof, before the Court came to be rejected.
3. The respondent had instituted a Suit for injunction simplicitor. By a judgment and decree dated 24th June 2022, the learned Civil Judge,

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Junior Division, Koregaon, was persuaded to decree the said Suit and restrain the petitioner-defendant from causing obstruction to the possession and enjoyment of the plaintiff over the suit property.

4. In the Appeal preferred by the petitioner against the said judgment and decree, the petitioner preferred an application for appointment of the Court Commissioner.

5. By the impugned order the learned District Judge was persuaded to reject the Application opining *inter alia* that, the suit was instituted for injunction simplicitor and the exercise was directed at the collection of evidence.

6. Mr. Barge, learned Counsel for the petitioner submitted that the petitioner-defendant had raised a specific ground in the Written Statement that the boundaries of the suit property were not correct. It was, therefore, necessary to ascertain the situation at site and for the purpose of elucidation of matter in controversy, the appointment of the Court Commissioner was imperative.

6. From the bare perusal of the prayer in the Application for the Court Commissioner, it becomes evident that the exercise was directed at collection of the evidence as the petitioner-defendant was seeking an appointment of the Court Commissioner to ascertain the dimension of the structure on the suit property and even the age of the said structure.

7. Since the suit was for injunction simplicitor and there was no dispute as regards the demarcation of the land or the identity of the property, the learned District Judge was justified in rejecting the Application for appointment of the Court Commissioner, at the appellate stage. This Court does not find any infirmity in the impugned order .

8. Petition dismissed.

[N. J. JAMADAR, J.]