

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8138 OF 2015**

Shri Samadhan Machindra Patil ..Petitioner

Vs

Maruti Sakharam Surve .. Respondent

Mr. Ajay A. Joshi, Advocate for Petitioner.

CORAM : R.G.KETKAR,J.
DATE : 22/01/2016

PC:

1. Not on Board. At the request of Mr. Joshi, taken up for admission. Heard Mr. Ajay Joshi, learned counsel for the petitioner.
2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the judgment and order dated 2.7.2015 passed by the learned 4th Jt.Civil Judge, Jr. Dn., Pandharpur below Exh.18 in R.C.S. No.272 of 2015. By that order, the learned trial Judge rejected the application made by the petitioner, hereinafter referred to as 'defendant, under Order 26, Rule 9 of C.P.C. for appointing Court Commissioner.
3. In support of this petition, Mr. Joshi reiterated the submissions made before the trial Court. He submitted that in the suit property there is pipeline to the extent of 9000 ft from Bhima river. Sugarcane corp is standing in the suit property.

These facts are required to be brought on record and for this purpose it is necessary to appoint Court Commissioner.

4. Respondent, hereinafter referred to as 'plaintiff', has instituted suit for perpetual injunction restraining defendant from causing obstruction to his possession over the suit property. While rejecting the application, the learned trial Judge observed in paragraph 4 that the dispute is as to who is in possession of the suit property. Which crops are standing in the suit property and what is source of water to the suit property, is not an issue. When the plaintiff is claiming relief of perpetual injunction, he has to establish possession over the suit property and for that purpose appointment of Court Commissioner is not necessary. I do not find that the learned trial Judge has committed any error in passing the impugned order for the reasons stated in paragraphs 4 and 5 of the impugned order. Hence, Petition fails and the same is dismissed. It is, however, expressly made clear that where a decree is appealed from by the petitioner, any error, defect or irregularity in the impugned order, affecting the decision of the case, may be set forth as a ground of objection in Memorandum of Appeal as contemplated by Section 105(1) of C.P.C.

(R.G.KETKAR, J.)