

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 13229 OF 2016**

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders.
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Mr. Prakash Mahadik, Advocate for Petitioner.

CORAM: R.G.KETKAR, J.

DATE : 02/12/2016

PC:

1. Not on Board. At the request of Mr.Mahadik, taken up in production board. Heard Mr. Prakash Mahadik, learned counsel for the petitioner.

2. By this Petition under Article 227 of the Constitution of India, the petitioner, hereinafter referred to as 'plaintiff', has challenged the Judgment and order dated 30.9.2016 passed by the learned trial Judge below Exhibit 99 in R.C.S. No.6 of 2014. By that order, the learned trial Judge rejected the application made by the plaintiff under Order 26, Rule 9 of C.P.C. While rejecting the application, the learned trial Judge noted that noted that

admittedly the plaintiff and the defendants are co-owners of the suit property. There is no suit for partition and separate possession. As the plaintiff and defendants are co-owners, there is no question of committing encroachment as alleged by the plaintiff.

3. For the reasons recorded in paragraph 6 of the impugned order, I do not find that the learned trial Judge has committed any error in passing the impugned order. Hence, Petition fails and the same is dismissed.

4. 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 the memorandum of appeal as contemplated by Section 105(1) of C.P.C.

5. Mr. Mahadik states that the plaintiff will consider filing of application for amending the plaint so as to pray for

partition of the suit property. Statement made by Mr. Mahadik is recorded.

(R.G.KETKAR, J.)