

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

WRIT PETITION NO.7455 OF 2014

Manoj Vasant Kaulage

..Petitioner.

Vs

Vittha Sukhadeo Aasabe

.. Respondent

Mr. Ajay A. Joshi, Advocate for Petitioner.

CORAM : R.G.KETKAR,J.

DATE : 31/01/2017

PC:

1. Heard Mr.Ajay Joshi, learned counsel for the petitioner at length.
2. By this Petition under Article 227 of the Constitution of India, the petitioner, hereinafter referred to as 'defendant', has challenged the Judgment and order dated 21.6.2014 passed by the learned 4th Jt. Civil Judge, Jr Dn., Pandharpur below Exhibit 28 in R.C.S.No. 694 OF 2012. By that order, the learned trial Judge rejected the application made by the defendants under Order XXVI,, Rule 9 of CP.P.C for appointment of Court Commissioner. Mr Joshi has invited my attention to the defence raised by defendants no.1 and 2 in the written statement and submitted that this is a fit case for appointment of Court Commissioner.
3. It is not possible to accept this submission, Perusal of the prayers made in the suit shows that the plaintiffs have instituted suit for injunction simplicitor. In view thereof, it is not necessary to appoint Court Commissioner. For the reasons recorded in

paragraph 4 of the impugned order, I do not find any fault in 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 the memorandum of appeal as contemplated by Section 105(1) of C.P.C.

(R.G.KETKAR, J.)