

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO. 13850/2016

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. R. A. Naik i/b. Umesh R. Mankapure for the
Petitioner

CORAM : K. K. TATED, J.

DATED : MAY 4, 2018

PC.:

1. Heard. By this petition under Article 227 of the Constitution of India the Petitioner challenges the order dated 04.01.2016 passed by the Civil Judge, Junior Division Palus below Exhibit- 40 in Regular Civil Suit No.65/2013 rejecting the Application made by the Petitioner Defendant Nos.1 and 2 under Order XXVI Rule 9 of the Code of Civil Procedure, 1908 for appointment of Court Commissioner to ascertain the position of the suit land.

2. In the present proceedings, the Respondent Plaintiff instituted the said suit for an order of injunction restraining the Petitioner from disturbing his possession for using 10' wide road as described in paragraph 1 of the plaint.

3 The Petitioner Defendant Nos.1 and 2 made Application below Exhibit-40 before the Trial Court for appointment of Court Commissioner to ascertain whether any alternate road is available to the Plaintiff or not. It is to be noted that it is not the case of the Plaintiff of easementary right to use the 10' wide road. His case is that he has right to use the existing road.

4 Considering these facts, the Trial Court has rightly rejected the Petitioner's Application under Order XXVI Rule 9 of the Code of Civil Procedure, 1908 on the ground that the parties can adduce the evidence to bring on record the position of the disputed road and there is no question of availability of other road. Hence, I do not find any substance in the Writ Petition. Same stands rejected.

(K.K.TATED, J.)