IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7830 OF 2018

Shaikh Rashid Shaikh Mohammad … Petitioner
Versus
Habibkhan Jahirkhan … Respondent

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Mr. M. M. Bhokarikar, Advocate for petitioner.
Mr. Mohammad Naseer Shaikh, Advocate for respondent.

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CORAM : M. S. KARNIK, J.

DATED : 8th AUGUST, 2019

PER COURT :-

1. By this petition, an order dated 28th February, 2017 passed by the trial Court, rejecting the application made by the plaintiff under Order XXVI Rule 9 of the Code of Civil Procedure, 1908, for appointment of Court Commissioner is challenged.

2. The suit filed by the plaintiff is for removal of encroachment and permanent injunction. The plaintiff has pleaded the encroached area in his plaint. The trial Court observed that the liability to prove his case is upon plaintiff and he cannot use any other machinery to collect the evidence as this will cause prejudice to the interest of other party. In this view of the matter, the application filed by the plaintiff came to be rejected.

3. I see no reason to interfere with the order of trial Court. However, after recording of the evidence is complete and if so advised, the plaintiff may make an application for appointment of Court Commissioner, which may be considered by the trial Court on its own merits.

4. With these observations the writ petition is disposed of.

[M. S. KARNIK, J.]

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