

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

WRIT PETITION NO.4191 OF 2019

Prakash Kisan Jadhav ... Petitioner
Vs.
Vilas Ramchandra Gidde and Ors. ... Respondents

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Mrs. Kishori Kelkar a/w Nifor Sayed I/b. Ms. Shweta Rathod &
Mr. Prashant Mairale for the Petitioner.
Mr. Prasad J. Patil I/b. Mr. Datta Mane for the Respondent Nos.1
and 2.

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CORAM : M. S. KARNIK, J.

DATE : 28th AUGUST, 2019.

P. C.:

1. Heard learned counsel for the petitioner.
2. The order under challenge is dated 28.9.2018 passed below Exhibit 113 rejecting the application made by the defendant under Order XXVI Rule 9 of the Code of Civil Procedure for appointment of Court Commissioner. The Trial Court by the impugned order rejected the application. The Trial Court was of the opinion that the present suit is not for encroachment and boundary dispute and further there is no dispute regarding identification of property or physical features of the disputed property. The only issue involved is that which party is in

possession of disputed property. The Trial Court held that this issue can be determine by adducing evidence.

3. Learned counsel for the petitioner relied upon the decision of the Apex Court in the case of **Ram Lal and Others Vs. Salig Ram and Others** reported in **2019 SCC Online SC 121** and **Lekh Raj Vs. Muni Lal and Others** reported in **(2001) 2 Supreme Court Cases 762** in support of her contentions. The said decisions are not applicable in the facts of the present case.

4. The evidence is yet to be recorded. At this stage I see no reason to interfere with the order passed by the Trial Court. However after the evidence is adduced if the petitioner-original defendant files an application for appointment of Court Commissioner, the same can always be considered on its own merits without being influenced by what is observed in the impugned order.

5. With these observations, the Writ Petition is rejected.

(M. S. KARNIK, J.)