

DDR

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

WRIT PETITION NO. 6756 OF 2019

Dattaji Vilas Tipugade	..Petitioner
vs.	
Vishwas Bhau Chougale	..Respondent
....	
Shri R.A. Mohite for petitioner.	
Shri K.P. Lad for respondent.	

....
CORAM : M.S.KARNIK, J.

DATE : 17th SEPTEMBER, 2019

P.C. :

Heard learned counsel for the petitioner.

2. The petitioner is the original defendant. The suit is filed by the plaintiff for declaration and injunction. The application is filed below Exhibit 23 by the defendant under Order 26 Rule 9 of the Code of Civil Procedure for appointment of the Court Commissioner. The trial Court by the order dated 22nd March, 2019 passed below Exhibit 23 rejected the application. The trial Court observed that there is no claim of the plaintiff as well as the defendant against each other in

respect of any encroachment committed by any of them. The plaintiff has to prove his case. The Court Commissioner cannot be appointed to collect the evidence.

3. In this view of the matter, I do not see any reason to interfere with the order passed by the trial Court. However, after the evidence is recorded, if the defendant makes an application for appointment of the Court Commissioner, the same can always be considered by the trial Court on its own merits and in accordance with law.

4. With these observations the Petition is disposed of.

(M.S.KARNIK, J.)