

DDR

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

WRIT PETITION NO. 6579 OF 2017

Hrushikesh Ashok Hore

..Petitioner

vs.

President of Kisan Education Society

Walwa & ors.

..Respondents

....

Shri Nikhil N. Pawar for petitioner.

Shri C.G. Patil for respondent No.1.

Ms. M.A. Devkar for respondent Nos. 2 to 4.

....

CORAM : M.S.KARNIK, J.

DATE : 26th SEPTEMBER, 2019

P.C. :

Heard learned counsel for the petitioner.

2. The order challenged in this Petition is passed below Exhibit 36 by the trial Court rejecting the application made by the plaintiff under Order 26 Rule 9 and 10 of the Code of Civil Procedure for appointment of the Deputy Superintendent of the Land Records as the Court Commissioner.

3. The suit is filed for partition and injunction. The trial Court rejected the application observing that the suit is only filed for partition and injunction. It is further observed that it is for the plaintiff to prove his possession over the suit property. Appointment of the Court Commissioner cannot be made to collect the evidence.

4. I do not see any reason to interfere with the order passed by the trial Court. It is however made clear that after the evidence is recorded, if the application is made for appointment of the Court Commissioner, the said application shall be considered by the trial Court on its own merits.

5. Reserving this liberty the Petition is rejected.

(M.S.KARNIK, J.)

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