

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

## WRIT PETITION NO.9895 OF 2019

Rajendra Krishna Bhagat ... Petitioner  
Vs.  
Ladu Akaram Bhagat and Ors. ... Respondents  
.....  
Ms. Anushree Kurup I/b. Mr. D.V. Sutar for the Petitioner.  
.....

CORAM : M. S. KARNIK, J.  
DATE : 26<sup>th</sup> SEPTEMBER, 2019.

P. C.:

1. Not on board. Taken on board.
2. Heard learned counsel for the petitioner.
3. By this petition, the petitioner is challenging an order passed by the Trial Court rejecting the application made by the defendant No.1 below Exhibit 68 for appointment of a Court Commissioner under Order XXVI Rule 9 of the Code of Civil Procedure. The suit is filed for perpetual injunction. The Trial Court has observed that considering the suit is for perpetual injunction, the aspect of possession would be of vital importance. It is for the parties to lead evidence and the Court Commissioner can not be appointed to collect evidence in such matters.

4. I see no reason to interfere with the order passed by the Trial Court. However, after the evidence is recorded, if defendant No.1 makes a application for appointment of the Court Commissioner, the same shall be considered by the Trial Court on its own merits.

5. With these observations, the petition is disposed of with no order as to costs.

( M. S. KARNIK, J. )