

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

12. WRIT PETITION No. 321 /2020

Harshal Bhausahab Adhav

...Petitioner

VERSUS

Arjun Lahanu Gore and others

...Respondents

Mr. Umakant U. Wagh, Advocate for petitioner

CORAM : ROHIT B. DEO, J.

DATE : 13th January, 2020

PER COURT:

1. The petitioner, who is the plaintiff in the suit brought, *inter-alia*, for removal of encroachment preferring application Exh. 27 for appointment of Court Commissioner to measure the suit property, which came to be dismissed vide order dated 20th March 2019.

2. While dismissing the application, the Trial Court held that the plaintiff cannot be permitted to collect evidence.

3. Undoubtedly, the plaintiff pressed similar application Exh. 7, which evidently was pending when application Exh. 27 was

decided, praying similar relief of appointment of Court Commissioner to measure the suit property.

4. Vide order dated 16th July 2019 the Trial Court was pleased to reject the application under Order XXVI Rule 9 of C.P.C. holding that the plaintiff is attempting to collect evidence and further that similar application Exh. 27 is already rejected.

5. The evidence is yet to be led.

6. In this view of the matter, reserving the liberty with the petitioner/plaintiff to move an application under Order XXVI Rule 9 of C.P.C. after entire evidence is recorded, this petition is dismissed since I do not find any error in the order impugned as would impel me to exercise the Writ Jurisdiction.

(ROHIT B. DEO)
JUDGE.

Madkar