

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Writ Petition No. 8491 / 2019

Vikram Shubhash Patil Savardekar .. Petitioner

Vs.

Smt. Suvarnlata Rajaram Kharatmal & Ors. .. Respondents

Mr. Shubham Kanade i/by Mr. Umesh Mankapure, Advocate for
Petitioner.

Ms. Tanvi Tapkire, Advocate for Respondent No.1 to 6.

CORAM : SANDEEP K. SHINDE J.

DATE : 15th MARCH, 2021.

P.C. : -

1. Petitioner's application preferred under Order-26, Rule-9 read with Section 75 of the Code of Civil Procedure, 1908 was rejected by the learned 4th Joint Civil Judge, Division Bench, Sangli. Feeling aggrieved, he preferred the Writ Petition under

Article 227 of the Constitution of India. Petitioner is Defendant in the Regular Civil Suit No. 437/2015, instituted by the Respondents. While Plaintiffs were under cross-examination, Defendant had filed an application below Exhibit-63 for appointment of the Court Commissioner to conduct the local investigation.

2. Perused the application and the impugned order. It is not an object of Order-26, Rule-9 to assist the party to collect evidence, where a party can get the evidence itself. The Petitioner sought appointment of the Court Commissioner, to bring on record details/ particulars of adjoining properties, its measurement. Obviously, applicant sought appointment of Commissioner to collect evidence. Thus, the application has been rightly rejected, on the ground that application was moved for collecting the evidence.

3. Moreso, it is apparent that subject application was filed to prolong the trial and therefore, Petition dismissed with Cost Rs.

1000/-, which he shall pay to Plaintiffs.

4. Petition is dismissed and disposed of.

(SANDEEP K. SHINDE, J.)