

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 3973/2021

**Vishwanath Motiram Wawge and anr...Versus... Liladhar Vasant Sarode and
ors**

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders

Mr.U.J.Deshpande, Advocate for petitioner

CORAM : AVINASH G. GHAROTE, J.
DATE : 06/12/2021

Heard Mr. Deshpande, learned counsel for the petitioner. The challenge is to the impugned order dated 8.9.2021, passed by the learned Trial Court, whereby the application filed by the defendant below Exh.28 under Order 26 Rule 9 for inspection of the disputed road as claimed in the plaint and for submitting a report in that regard has been allowed.

Mr. Deshpande, learned counsel for the petitioner/plaintiff submits that the allowing of the said application would permit the defendant to collect the evidence, which is not the purpose of Order 26 Rule 9 of CPC and therefore the impugned order cannot be sustained.

It is not in dispute that the suit as filed by the plaintiff, is for removal of illegal encroachment claimed to have been made by the defendant on the customary way

and approach way of the plaintiff as indicated in the plaint. It is therefore apparent that the appointment of the Commissioner for a spot inspection to determine the existence of a way would be a step in aid of the decision of the suit on merits and cannot be construed as an application to collect evidence. I, therefore, do not see any infirmity in the impugned order, as it merely directs the appointment of Commissioner for spot inspection in order to ascertain the existence of the way. The petition, therefore, is without any merit and is dismissed.

JUDGE

rvjalit