

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.8163 OF 2021**

Bharat Bhimrao Hajgude

..Petitioner

Versus

Kailas Trimbak Gadhave

..Respondent

Mr. Sujeet R. Bugade, for the Petitioner.

Mr. Samir A. Kumbhakoni, for the Respondent.

CORAM : NITIN W. SAMBRE, J.

DATE : 9th NOVEMBER, 2022

PC.

1. The order impugned is passed below Exh.9 in an application taken out by the petitioner/plaintiff under provisions of Order XXVI Rule 9 of the CPC seeking appointment of Court Commissioner.

2. The petitioner/plaintiff has filed a suit seeking decree in the form of mandatory injunction so as to carry out repairs to the suit premises.

3. Counsel for the petitioner would urge that it is necessary to appoint the Court Commissioner to check and record the nature of repairs to be carried out. He has also relied on the consent decree passed *inter se* between the parties in the earlier round of litigation wherein provision is said to have made for carrying out repairs.

4. I have appreciated the said submissions.

5. Not only the relief claimed if granted amounts to granting final relief, the Court below, in my opinion, is justified in recording finding that the petitioner is trying to collect the evidence by taking recourse to Order XXVI Rule 9 of CPC. As such, no error could be noticed in the order impugned.

6. The petition as such stands dismissed.

[NITIN W. SAMBRE, J.]