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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO. 9484 OF 2021

BHAGWAN GANGARAM KHATALE

....PETITIONER

V/s.

RAMBHAU GANGARAM KHATALE

....RESPONDENT

Mr. Dushyant S. Pagare Advocate for the Petitioner

CORAM : NITIN W. SAMBRE, J.

DATE: MARCH 11, 2022.

P.C.:

- 1) Heard learned counsel for the Petitioner-Plaintiff.
- 2) The Trial Court rejected the prayer for appointment of Court Commissioner under Order XXVI Rule 9 of Code of Civil Procedure, 1908.
- 3) I have perused the reasons which are formed to be basis for rejection of the prayer.
- 4) Petitioner-Plaintiff has already given an admission that the Suit property is ancestral. His evidence is yet to be concluded. As such,

Mr. Pagare is justified in claiming that such admission can be explained.

5) Be that as it may, fact remains that before filing Suit for encroachment, it was for the Petitioner to take appropriate steps to demonstrate that prayer for removal of encroachment is justified from the evidence collected.

6) In the aforesaid background, the move on the part of the Petitioner is nothing less than an attempt to collect the evidence so as to prove his claim as is sought to be canvassed in Suit proceedings.

7) In the aforesaid background, no case for interference is made out. Petition fails, stands dismissed.

[NITIN W. SAMBRE, J.]