

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION 10901 OF 2014

Shri Chandrakant Jaysingh Lokhande & Ors. ...Petitioners
vs.
Dnyandev Kisan Rajane & Ors. ...Respondents
Mr.Ajit J. Kenjale for Petitioners.

CORAM : ROHIT B. DEO, J.

DATED : 19 JULY 2022

P.C. :

1. The Petitioner is the defendant in Regular Civil Suit 330/2014 who is assailing the order dated 22.9.2014 whereby the learned trial Judge rejected the application preferred by the defendant for appointment of Court Commissioner under Order 26 Rule 9 of the Code of Civil Procedure, 1908 (Code).
2. The application seeking appointment of Commissioner is predicated on the assertion that it is necessary to identify the suit property since the description of the suit property is incorrect.
3. According to the learned Counsel for the defendant, as a fact, the suit property is not in existence.
4. The learned trial Judge was pleased to reject the application under Order 26 Rule 9 of the Code *inter alia* observing that the suit is for injunction simpliciter and does not involve the question of boundaries or encroachment, and therefore, Commissioner cannot be appointed only on

the premise that the parties shall not be put to prejudice. The learned trial Judge further notes that the burden to prove the ownership and possession is that of the plaintiff and if the property is not identifiable, it will be the plaintiff who shall suffer.

5. I do not see any error in the observations recorded in the impugned order and I am not inclined to interfere in writ jurisdiction.

6. I may, however, clarify that if, after the parties conclude the evidence, the learned trial Judge is of the opinion that local inspection is necessary to throw light on the evidence which has come on record, the issue may be revisited.

7. Subject to the observations supra, the petition is dismissed.

(ROHIT B. DEO, J.)