

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

933 WRIT PETITION NO. 15330 OF 2023

SANJAY ABHIMANYU PATIL

VERSUS

RAGHUNATH AMBU PATIL AND ANOTHER

Advocate for Petitioner : Mr. Patil (Borse) Paresh B.

Advocate for Respondent No. 1 : Mr. P.D. Patil

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CORAM : SHAILESH P. BRAHME, J.

DATE : 21st DECEMBER, 2023

PER COURT :

1. Heard learned counsel for the litigating sides.
2. The petitioner is challenging order dated 07.11.2023, passed below Exhibit 13 by learned Civil Judge Junior Division, Badgaon, in RCS No. 64 of 2022 appointing Court Commissioner under Order XXVI Rule 9 of Code of Civil Procedure.
3. Admittedly, RCS No. 64 of 2022, is filed by respondent no.1 for injunction and possession. The suit is at the pre-trial stage. The issues have not been settled. The respondent filed application Exhibit 13 under Order XXVI Rule 9 of Code of Civil Procedure (for short 'CPC'), which is allowed by the impugned order.
4. In view of consistent view of this Court that recourse to Order XXVI Rule 9 of CPC, cannot be had during pre-trial stage, normally, I am inclined to allow this Writ Petition.

5. A reference can be made to the law laid down in Writ Petition No. 13441 of 2019 order passed by this Court on 07.11.2019, in the matter of *Sarjerao Nathu Bangar and others Versus Namdev Keru Bangar and others*. The respondent no. 1 shall be at liberty to take recourse to Order XXVI Rule 9 of CPC, after commencement of trial or after leading evidence.

6. Impugned order below Exhibit 13 passed in RCS No. 64 of 2022, is quashed and set aside. The litigating parties shall be at liberty to take recourse to Order XXVI Rule 9 of CPC, after commencement of trial.

7. Writ Petition is disposed of.

[SHAILESH P. BRAHME, J.]