

Nikita

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

WRIT PETITION NO.15661 OF 2023

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Date: 2023.12.18
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Shridhar Tukaram Jadhav

... Petitioner

V/s.

Pradip Murlidhar Thorat

... Respondent

Mr. Purushottam G. Chavan for the Petitioner.

CORAM : AMIT BORKAR, J.

DATED : DECEMBER 18, 2023

P.C.:

1. The petitioner is the defendant in a suit filed by respondents seeking declaration of ownership and for injunction restraining defendant from disturbing plaintiff's possession over the suit property. Declaration that plaintiff be exclusively declared as owner of the suit property and injunction restraining defendant from disturbing plaintiff's possession over the suit property.
2. In such a suit, defendant filed an application under Order 26 Rule 10 (A) read with Section 75 of the Code of Civil Procedure, 1908.
3. It is well settled that in a suit of such nature, the relevant issue would be whether the plaintiff proves his ownership over the suit and he further proves his exclusive possession of the suit property. Considering the nature of dispute which needs to be

adjudicated by the Trial Court, the burden of proof is on the plaintiff. Therefore, such an application filed by defendant for appointment of Court Commissioner cannot be made for the purpose of collection of evidence. Such application can be made broadly in a suit for removal of encroachment or decision of boundary dispute.

4. Therefore, impugned order does not suffer from any legal infirmity.
5. The writ petition stands rejected. No costs.

(AMIT BORKAR, J.)