

VRJ

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

WRIT PETITION NO.1672 OF 2020

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RAMESH
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VAIBHAV RAMESH
JADHAV
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Keda Bhavrao Suryavanshi & Ors. ... Petitioners

V/s.

Bandu Narayan Shirode & Ors. ... Respondents

Mr. G.R. Agrawal with Ms. Naina P. B. for the petitioners.

Mr. Ankur Pahade for respondent Nos.1 and 2.

CORAM : AMIT BORKAR, J.

DATED : AUGUST 23, 2023

P.C.:

1. Challenge in this petition is to the order of appointment of Court Commissioner under Order 26 Rule 9 of the Civil Procedure Code, 1908.

2. The respondent Nos.1 and 2 filed Regular Civil Suit No.22 of 2016 for possession of the suit properties. The suit properties are described in paragraph 1 of the plaint. Suit property is specified portion surrounded by boundaries mentioned in the plaint. In such a suit, plaintiff filed an application for appointment of Court Commissioner to bring on record situation of the suit property. It is well settled that appointment of Court Commissioner can be made in a suit for removal of encroachment as such appointment is necessary for effectual adjudication of the suit. In a suit for

possession relevant question would be title of the plaintiff. The suit property having been described by boundaries, there was no question of appointment of Court Commissioner to ascertain the ground situation. Therefore, the trial Court could not have granted relief under Order 26 Rule 9. The impugned order, therefore, cannot be sustained. Hence, following order:

(a). Order dated 27th August 2019 in Regular Civil Suit No.22 of 2016 passed by the Civil Judge, Junior Division, Kalwan is set aside.

3. The civil writ petition stands disposed of. No costs.

(AMIT BORKAR, J.)