

Nikita

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

WRIT PETITION NO.14003 OF 2023

Anup Vishnu Sawant

... Petitioner

V/s.

Sanjay Tanaji Kadam and Anr.

... Respondents

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Mr. Abhijeet J. Kandarkar for the petitioner.

CORAM : AMIT BORKAR, J.

DATED : NOVEMBER 7, 2023

P.C.:

- 1.** The Trial Court by impugned order rejected the petitioner's application for appointment of Architect as a Court Commissioner to measure area of the suit property.
- 2.** The Petitioner filed a suit for grant of new apartment in lieu of suit property agreed in agreement dated 31st July 2010. Further injunction restraining/disturbing plaintiff's possession till the defendants gets permission from Municipal Corporation is also sought.
- 3.** According to the petitioner, since the defendants have denied the area mentioned in the registered document of sale deed, the appointment of Court Commissioner is necessary.
- 4.** Considering the scope of order 26 Rule 9 of Code of Civil

Procedure, 1908 it is well settled that such a relief can be granted only in a suit for removal of encroachment or where boundary dispute is involved. In a suit for relief prayed by the petitioner as mentioned above, petitioner will have to prove his case by leading oral evidence in support of his case. The petitioner cannot seek appointment of Commissioner for collection of evidence.

5. Hence, exercise of discretion by the Trial Court while rejecting application for appointment of Court Commissioner does not suffer from error of jurisdiction.

6. The writ petition stands dismissed. No costs.

(AMIT BORKAR, J.)