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

WRIT PETITION NO.30 OF 2023

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KULKARNI

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Ankush Uddhav Jadhav

... Petitioner

V/s.

Rahul Rajendra Rathod & Anr.

... Respondents

Mr. Samir Kumbhakoni for the petitioner.

Mr. Prasad B. Kulkarni for the respondent.

CORAM : AMIT BORKAR, J.

DATED : OCTOBER 12, 2023

P.C.:

1. The petitioner is original plaintiff who filed Regular Civil Suit No.22 of 2019 seeking removal of tin shed over the suit property. After completion of evidence, petitioner filed an application under Order 26 Rule 9 of the Code of Civil Procedure, 1908. The Trial Court rejected the application on the ground that though the expression “encroachment” is mentioned in the suit, the petitioner and defendants are not adjacent owners.

2. On perusal of the plaint, it appears that the suit is essentially for removal of tin shed over the suit property. Whether the tin shed has been constructed over the land owned by the defendants or whether it is with the permission, all these issues need to be decided based on evidence produced by the parties before the Court.

3. For the adjudication of these issues, appointment of Court Commissioner is not permissible. Therefore, rejection of application by the Trial Court cannot be faulted.
4. The writ petition is, therefore, dismissed. No costs.

(AMIT BORKAR, J.)