

AGK

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

WRIT PETITION NO.13461 OF 2023

Tukaram Trambak Ighe

... Petitioner

V/s.

Suresh Narayan Ighe

... Respondent

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Mr. Lakshyaved R. Odhekar with Mr. Omkar N.
Mhasale for the petitioner.

CORAM : AMIT BORKAR, J.

DATED : NOVEMBER 1, 2023

PC.:

- 1.** The petitioner is original defendant No.1 who filed an application for appointment of Court Commissioner under Order 26 Rule 9 of the Code of Civil Procedure, 1908.
- 2.** The respondent filed suit for injunction bearing Regular Civil Suit No.77 of 2006 seeking permanent injunction against the defendant not to create road from the suit property. However, declaration is sought that the order passed by the Tehsildar on 18 January 2006 be declared as null and void.
- 3.** Considering the scope of suit, allowing application for appointment of Court Commissioner would amount to collection of evidence which is not permissible. Hence, the impugned order does not suffer from any legal infirmity.

4. It is open for the defendant to lead oral evidence in support of his defense.
5. The writ petition accordingly stands disposed of. No costs.

(AMIT BORKAR, J.)