



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 4917 OF 2023

(SANTOSH BALUSA VYAWAHARE..VS.. VASANT HARI TUPKARI(DEAD) THR. LRS & OTH.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri R.G.Kavimandan, Advocate for Petitioner.
Shri N.B.Kalwaghe, Advocate for Respondent No.1A.

CORAM : ANIL S. KILOR, J.
DATED : SEPTEMBER 04, 2023.

1. Heard.
2. The order dated 24/07/2023 passed below Exh.187 by learned Civil Judge Senior Division, Mehkar in Special Civil Suit No.06 of 2019 appointing Court Commissioner under Order XXVI Rule 9 of the Code of Civil Procedure, at the instance of the plaintiff in a suit for partition and separate possession, is under challenge in this petition on the ground that it amounts to collection of evidence.
3. However, after going through the record, it is the defendant No.1's own case that he spent Rs.10,00,000/- for constructing internal roads, drainage and facilities in the land in dispute and further he himself stated in the oral evidence that if the Court Commissioner is appointed the Commissioner can verify the facts stated by the defendant in his evidence. Thus, considering the

oral evidence of the defendant No.1/petitioner, I am of the view that the trial Court has not committed any error in allowing the application. No interference in the impugned order is warranted.

Accordingly, the Writ Petition is **dismissed**.
No order as to costs.

JUDGE

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