

Shabnoor

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

WRIT PETITION NO.1892 OF 2023

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Indrajeet Dhanajirao Nimbalkar
Khardekar

... Petitioner

V/s.

Dadasaheb Shivaji Shinde

... Respondent

Mr. Dhairyasheel Vijay Sutar for Petitioner.

CORAM : AMIT BORKAR, J.

DATED : JULY 26, 2024

PC.:

1. By this petition under Article 227 of the Constitution of India, the petitioner (original defendant) is challenging an order passed by the Trial Court rejecting an application under Order 26, Rule 9 of the Code of Civil Procedure, 1908 ("CPC") seeking appointment of Court Commissioner for measurement for the suit property.

2. On perusal of the plaint, it appears that the respondent-plaintiff sought injunction not to restrain the plaintiff while demolishing five shops and not to disturb plaintiff's possession over the suit property. On perusal of the plaint, only question which the Trial Court will be required to decide is whether the plaintiff has proved his ownership over the suit property and lawful possession. No issue in relation to identity or boundaries or

location of the property is involved. Hence, rejection of application under Order 26, Rule 9 of the CPC need not be faulted.

3. The writ petition is, therefore, dismissed.

(AMIT BORKAR, J.)