

VRJ

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

WRIT PETITION NO.10469 Of 2018

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RAMESH
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VAIBHAV RAMESH
JADHAV
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Sarjerao Nagnath Bharate & Ors. ... Petitioners

V/s.

Ratnabai Maruti Bharate & Ors. ... Respondents

**WITH
WRIT PETITION NO.9907 OF 2018**

Gajendra Dattu Bharate ... Petitioner

V/s.

Ratanbai Maruti Bharate & Ors. ... Respondents

Mr. Nakul Vivek Shukla h/f Mr. Prasad Kulkarni for the
petitioners.

CORAM : AMIT BORKAR, J.

DATED : DECEMBER 4, 2024

P.C.:

1. The petitioners' applications for appointment of Court Commissioner under Order XXVI Rule 9 of the Civil Procedure Code, 1908 have been rejected by the Trial Court on the ground that the said applications are not maintainable before framing of issues. Though the Trial Court was not justified in rejecting the applications on the ground that the Court Commissioner cannot be appointed before framing of issues in view of judgment in the case of **Rahul S. Shah vs. Jinendra Kumar Gandhi & Ors.** reported in (2021) 6 SCC 418.

2. However, considering the nature of the suit which is restricted to the relief of permanent injunction, and no dispute in relation to encroachment or boundary dispute arises in the suit, the orders of the Trial Court need not be interfered with. The writ petitions are, therefore, dismissed.

3. Pending interlocutory application(s), if any, stand disposed of.

(AMIT BORKAR, J.)