



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 9546 OF 2023

**DADASAHEB SARJERAO PADUL AND OTHERS
VERSUS
TUKARAM GANGARAM BACHATE AND ANOTHER**

...

Advocate for the Petitioners : Mr. Mane Dhananjay A

...

CORAM : SHAILESH P. BRAHME, J.

DATE : 18th FEBRUARY 2025

PER COURT :

. Heard Mr. Dhananjay Mane learned Counsel for the petitioner.

2. Though notice for final disposal was served upon the Respondents and they have engaged Mr. Singare, Counsel for them, he is absent.

3. The petitioner is taking exception to order dated 05.06.2023 below Exhibit-34 passed by the Civil Judge, Junior Division in RCS No.643/2015, allowing application under Order 26 Rule 9 at the stage before conclusion of recording of evidence.

4. Respondent is the original Plaintiff who has filed RCS No.643/2015 for injunction and removal of encroachment. It is contested by the petitioner. Issues were settled. Respondent

submitted application at Exhibit-34 for appointment of Commissioner. By impugned order, it was allowed.

5. Consistently this Court has taken a view that application under Order 26 Rule 9 cannot be entertained at the preliminary stages of the proceedings. A useful reference can be made to **Sarjerao Nathu Bangar and others vs. Namdev Keru Bangar and others** in Writ Petition No.13441 of 2019. In that view of the matter, I find that impugned order is perverse and unsustainable. I, therefore, pass following order :

ORDER

- (i) Writ Petition is allowed.
- (ii) Impugned order below Exhibit-34 is quashed and set aside.
- (iii) Parties shall be at liberty to take recourse to Order 26 Rule 9, if occasion so arises after recording of evidence.

SHAILESH P. BRAHME
JUDGE