

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIRCUIT BENCH AT KOLHAPUR

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2293 OF 2025

Santosh Bibhishan PawarPetitioner

Vs.

Usha Sukhdeo Londhe & Ors.Respondents

Mr. Shankar Katkar with Ms. Manisha Devkar, for the Petitioner.
Mr. Vaibhav Ugle, for Respondent (through vc).

CORAM : S. G. CHAPALGAONKAR, J.

DATED : 19th SEPTEMBER 2025

PC.:-

1. The Petitioner impugns order dated 19th October 2024 passed by learned Civil Judge, Junior Division, Pandharpur in Regular Civil Suit No.506 of 2019, thereby rejecting an Application filed under Order 26 Rule 9 of Civil Procedure Code for appointment of Court Commissioner.

2. The Petitioner is original Plaintiff in Regular Civil Suit No.506 of 2019 instituted before Civil Judge, Junior Division at Pandharpur. The Petitioner contends that he is in possession of suit property and Defendants are obstructing his possession. The

Defendants counters aforesaid contentions and raises their claims of possession over suit property.

3. The Plaintiff filed an Application below Exhibit-39 invoking provisions of Order 26 Rule 9 of Civil Procedure Code and prayed for appointment of Court Commissioner and submission of report as regards standing crops, bore well, electric connection, pipeline etc. The Application was opposed by Respondents. The Trial Court refused to entertain Application. Hence, this Writ Petition.

4. Apparently, Plaintiff as well as Defendants are claiming their possession over suit property and seeking relief of injunction against each other. The Plaintiff in support of his assertions wants to bring on record situation on the spot, which according to him depicts his possession. The Trial Court observed that Plaintiff can lead his own evidence and establish his possession over property and for that purpose appointment of Court Commissioner would not be necessary.

5. It is trite that, appointment of Court Commissioner cannot be allowed for collection of evidence. The party who asserts

his possession has to establish it by leading his own evidence and assistance of Court Commissioner cannot be allowed in such case. It is now clear that appointment of Court Commissioner can be made where there is dispute as to boundaries.

6. In present case, plaintiff could not bring on record any acceptable reason that would invite Court to invoke jurisdiction under Order 26 Rule 9 of Civil Procedure Code. Therefore, there is no jurisdictional error in impugned order. No case is made out to cause interference under Article 227 of Constitution of India. Hence, Writ Petition stands **rejected**.

(S. G. CHAPALGAONKAR, J.)