

VRJ

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

WRIT PETITION NO.2326 OF 2024

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Chandrakant Shantilal Kothari ... Petitioner
V/s.
Asaboddin Ibrahim Mulani & Ors. ... Respondents

Mr. Abhijit Kulkarni with Abhay Jadhawar for the
petitioner.

CORAM : S. G. CHAPALGAONKAR, J.

DATED : SEPTEMBER 18, 2025

P.C.:

1. The petitioner seeks to assail order dated 16th December 2022 passed by Civil Judge, Junior Division, Barshi in Regular Civil Suit No.199 of 2018, thereby rejecting his prayer for appointment of Court Commissioner under Order XXVI Rule 9 of the Civil Procedure Code, 1908.
2. The petitioner has instituted a suit for relief of perpetual injunction contending that he is in possession of the property bearing Gat No.747 situated at Barshi, Taluka Barshi, District Solapur. According to him, defendants are obstructing his possession.
3. In said suit the petitioner filed an application under Order XXVI Rule 9 of the Civil Procedure Code, 1908, for appointment of

Court Commissioner. Learned Trial Court rejected said application firstly on the ground that suit is instituted for decree of perpetual injunction and there is no dispute as to boundaries. Secondly, Trial Court has rightly applied parameters of Order XXVI Rule 9 of the Civil Procedure Code, 1908, and observed that in such a case it is for plaintiff to prove his possession.

4. Learned advocate appearing for petitioner relies upon the judgment of the Hon'ble Supreme Court in case of ***Haryana Waqf Board v. Shanti Sarup & Ors.***, reported in (2008) 8 SCC 671, to contend that where there is a dispute as to boundaries the appointment of Commissioner is necessary. There cannot be dispute as to the proposition of law espoused in aforesaid case. However, in present case, apparently plaintiff has not pleaded about a dispute as to boundaries. On the other hand, he specifically pleads that he is in possession of the land owned by him and the defendants are trying to obstruct his possession.

5. In that view of the matter, order passed by the Trial Court is in consonance with legal position. No jurisdictional error is pointed out to interfere in writ jurisdiction. In result, writ petition stands rejected and disposed of.

(S. G. CHAPALGAONKAR, J.)