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

WRIT PETITION NO. 1263 OF 2024

Kanaiyalal Manilal Patel

...Petitioner

V/s.

Ramanbhai Manilal Patel and Ors.

... Respondents

Mr. Sagar P. Batavia for the Petitioner

Mr. Omkar Nagwekar i/b. Prabha Badadare for Respondent No. 1

CORAM : ALOK ARADHE, CJ.

DATE : 08 JULY 2025

P.C. :

1. In this Petition under Article 227 of the Constitution of India, the Petitioner has assailed the validity of the order dated 27 October 2023, passed by the Trial Court, by which application preferred by the Petitioner under Order 26 Rule 9 of the Code of Civil Procedure has been rejected.

2. Facts giving rise to filing of the Petition briefly stated are that the Petitioner has filed the Suit seeking a delaration and permanent injunction. The Petitioner has sought a relief of declaration that suit property is sold by Defendant No.1 to the Plaintiff and Defendant No.1 has no right, title or interest on the suit property. The Petitioner has also sought an injunction

restraining the Defendants from raising any construction over the said land and directed to pay rent and damages as well as cost of the Suit.

3. It is the case of the Petitioner that despite an order of status-quo granted by the Trial Court, the Defendants are raising construction on the suit property. The Petitioner, therefore, filed an application under Order 26 Rule 9 of the Code of Civil Procedure for appointment of a Commissioner. The aforesaid application has been rejected on the ground that a Commissioner cannot be appointed to collect evidence.

4. I have heard the learned Counsel for the parties at length and perused the record.

5. It is open for the Petitioner to lead evidence to prove that the construction is being raised by the Defendants despite an injunction by the Trial Court. The Plaintiff cannot be permitted to collect evidence in the form of appointment of the Commissioner. The order passed by the Trial Court in neither suffers from any jurisdictional error nor any infirmity warranting interference of this Court in exercise of supervisory jurisdiction.

6. In the result, the Writ Petition is dismissed.

(CHIEF JUSTICE)