

MHPU020046602020



ORDER BELOW EXH. 21 IN S.C.S. No.
1139/2020

Mandakini Vs. Ravindra & Anr.

1. The present application is filed by defendant for appointment of Court Commissioner as per Section 75, Order XXVI Rule 9 read with 151 of Code of Civil Procedure. It is submitted that, the plaintiff has filed suit for Declaration of ownership, Possession, and permanent injunction. That the defendant has filed his written statement on record. It is further stated that, the original owner sold the entire land in Gat No. 101 admeasuring 43 R to Sou. Vandana Shrinivas Joshi, Sou. Shashikala Subhash Dube, Sou. Manasi Dhananjay Vaidya and Sou. Meena Krushkumar Nand and therefore Mutation was effected bearing no. 423 in the 7/12 extract and they became the owner and possessor of the said land. That thereafter they converted said land into N.A. and also sanctioned the layout on said land and certain small plots were erected by them and they decided to sale the same to third party. That therefore Sou. Vandana Shrinivas Joshi and Ors. Prepared private layout on the said land and 21 plots were erected and remaining land was kept in their possession. That the 21 plots were erected upon 30 R land and the remaining land of 13 R was the open space adjoining said 21 plots and road in private layout and also the land left for extension of Pune-Paud Road. That the said 13 R land adjoining the plots was in possession of original owner and the said owners decided to sale the said land by keeping intact the rights of 21 plot owners to use the

said land for road purpose for their ingress and outgress. That the owners also decided to sale the land left for Pune-Paud road extension and total 13 Gunthe i.e. 13000 Sq. ft. That the said fact came to the knowledge of defendant no. 2 and 3 and after discussions and deliberation between the parties the original owner decided to sale the said land for the consideration mentioned in the sale deed and accepted the proper consideration and sold the said land to defendant nos. 1 and 2 by way of sale deed. The said sale deed came to be registered in the office of Sub-Registrar Mulshi (Paud) bearing sale deed no. 3464/2012 and since then the defendants are in possession of said 13 R land. That the plaintiff had filed the present suit by concealing the said fact from the court and had filed the present suit for by claiming declaration of ownership, possession and permanent injunction which is not tenable in law and required to be dismissed.

2. It is further stated that, to bring the real and true situation before the court and proper adjudication of the suit it is necessary to get measure the suit property through TILR Pune calling his report in court. It is finally prayed to allow the application.

3. The advocate for plaintiff in his say overleaf the application submitted that, the present application is strongly objected. It is further stated that suit property is of 2 Gunthas and the defendant has encroached the same claiming his ownership which is totally wrong and illegally occupied possession and hence the application may be rejected.

4. Considered rival submission made. Heard Advocates for both parties at length. The following points arise for my consideration to which I have noted my findings for the reasons mentioned below :-

<u>SR. NO.</u>	<u>POINTS</u>	<u>FINDINGS</u>
1)	Whether the court commissioner is required to be appointed as per Order XXVI Rule 9 of the CPC for local investigation or for elucidating the matter in dispute ?	- In the affirmative.
2)	What order ?	- Application allowed.

REASONS

AS TO POINT NOS.1 AND 2 :-

5. Heard argument advanced by both sides at length. The Advocate for defendant in support of his case had placed reliance upon under mentioned authority :-

Annappa Mestha Vs. Mutayya Achari 2002 (2) Kar.L.J. 650

It is observed and held by Hon'ble High Court while dealing with O. 26 R. 9 and Sec. 115 of Code of Civil Procedure 1908 that

“The need to have resort to Order 26, Rule 9 ought to be felt by the Court for purpose of elucidating certain details which, in its opinion, can neither be had from the records nor can be produced by the parties by way of oral and documentary evidence. The details so required by the Court ought to be such that in their absence determination of issues in dispute cannot be effectively adjudicated upon necessitating the appointment of Commissioner on its own or at the instance of either of the parties. Where the Court

is of the opinion that the matters in dispute could be effectively adjudicated upon by having resort to the evidence available on record, the Court at its discretion can refuse to direct appointment of Commissioner. In the case on hand the Court below on more than one occasion referred to the sufficiency of evidence on record for deciding the rival claims of the parties. When the Court itself is of the view that elucidation of any matter is not required for purpose of deciding the case, the order passed by it rejecting the IA. No. XI filed for appointment of Commissioner cannot be found fault with. In the view that I have taken, I find that the Court below has not exercised its jurisdiction illegally or with material irregularity calling for interference at the hands of this Court. In the result for the reasons stated above, there is no merit in the revision petition and it is accordingly dismissed.

6. Considering controversy between parties, it is settled principle of law as per Order XXVI Rule 9 of CPC that appointment of court can help the court to find out whether the map or plan produced on record coming from authentic source is agreeable between the parties. Such map of land drawn by the city surveyor or the competent surveyor though not conclusive when produced, if agreed between the parties can ensure early end of the civil dispute between the parties. It is also settled position that the court has discretion to order local investigation. The object of local investigation is not so much to collect evidence which can be taken in the court, but to obtain evidence which from its peculiar nature can only be had on the spot. The cases of encroachment, boundary disputes and disputes about identity of lands are instances when the

court should ordered local investigation under Order XXVI Rule 9 of CPC.

7. In order to determine whether there has been an encroachment, it is always desirable to get the fields measured by an expert and find out exact area encroached upon, oral evidence cannot conclusively prove such an issue. The trial court may certainly required authentic map so as to draw statutory presumption of Section 83 of the Indian Evidence Act regarding accuracy of such map or plan produced on record of the competent officials from DILR or TILR as the case may be. It is also settled that when there is a boundary dispute, location or measurement of the land or both party alleging encroachment of their property, identification of the property by demarcation is necessary.

8. Thus it is also observed that in the cases of encroachment, measurement of both adjoining lands is not necessary. It is also observed that the measurement and preparation of the map is a scientific method based on principle of mathematical calculations. It is also observed that, the determination of encroachment is nothing but a comparisons of the map i.e. one is revenue map which forms basis and the second is the map prepared on spot showing situation on spot as regards actual possession. For the purpose of the suit, main object of the map is to find out encroachments, to identify the property in dispute or to show various situations and positions on ground. The encroachment has to be find out on the basis of

difference in two maps i.e. the basic survey map and the map drawn as per spot situation or the field map drawn by the surveyor.

9. In the case of **Ram Kishore Sen Vs. Union of India and others AIR 1966 SC 644** it is observed that,

“The appointment of court commissioner who shall be competent official of the DILR or TILR as the case may be and who shall secure copies of necessary public record relating to subject matter of dispute to settle the boundaries of suit property by carrying out measurement after due notice to the parties to the suit and also issuing notice to the adjacent owners/ possessors to the suit property so as to prepare and submit the detail map. The trial court on the basis of such written report may allow the parties to lead additional evidence and endeavor to get an agreed map on record. Thus the court can decide the real controversy in the suit between the parties and executing court would have no any difficulty to effectively execute the decree passed in such suit”.

10. In the case of **Haryana Wakf Board v/s Shanti Sarup and others AIR 2008 SC (supp) 616** it is observed by Hon'ble Supreme Court that

“ The dispute that was raised by the parties before the court was whether the respondent had encroached upon any land belonging to the appellant-Board. Therefore, it cannot be in dispute that the dispute was in respect of the encroachment of the suit land. Admittedly, in this case, an application was filed under Order 26 Rule 9 of the Code of Civil Procedure which was rejected by the trial court but in view of the fact what it was a case of demarcation of the disputed land, it was

appropriate for the court to direct the investigation by appointing a Local Commissioner under Order 26 Rule 9 of the CPC”.

11. It is settled position according to section 75 and Order XXVI of the CPC that the court has discretion to appoint a Commissioner, but the discretion has to be exercised in a judicious and sound manner and not whimsically. Before appointing commissioner the court shall examine pleadings, relief claimed and real controversy between the parties.

12. Thus considering the above settled position of law with respect to appointment of court commissioner, perused case record it reveals that, there is dispute between the parties with respect to the encroachment committed by defendant over suit property admeasuring 00H. 02R open land as alleged by the plaintiff in his plaint. Thus, considering the said case of defendants and also considering the provisions of Order 26 Rule 9 and Section 75 of Code of Civil Procedure it is observed that, the Court Commissioner can be appointed for local investigation and for the purpose of elucidating any matter in dispute.

13. Thus, in present case, the dispute between the parties is with respect to title of the land and its identification. That it also appears that the original owners had sold out the plots by way of private layout. That it is also observed that there is no commencement of trial in present case and evidence is yet to begin. The defendant by way of present application intends to carry out the

measurement of Gat No. 101. Their is also dispute about identity of the land. Thus the application filed by defendant appears to be bonafide and deserves to be allowed which will be helpful for the proper adjudication of the suit on its merits. Hence, point No.1 is answered in affirmative and with the help of point No.2 the following order is passed;

ORDER

- 1) Application at Exh.21 is hereby allowed.
- 2) TILR, Pune is hereby appointed as Court Commissioner.
- 3) The Court Commissioner is directed to measure the **entire Gat No. 101** and prepare its panchanama and map and submit it to the Court along with his report about the factual position of suit property if any on or before 16/1/2026.
- 4) Defendant is hereby directed to deposit the requisite charges and fees of Commissioner in TILR office, Pune and placed its receipts on record.
- 5) Both parties are hereby directed to give copy of plaint, written statement, copies of all relevant revenue/public/private record and other necessary documents and also the copies of all the sale deeds executed by Sou. Vandana Shrinivas Joshi and Ors. of Gat No. 101 admeasuring area 43R, Copy of Private Layout prepared at the instance of Sou. Vandana Shrinivas Joshi and Ors. and all the sale deeds of 21 Plots executed till date to the Court Commissioner before Commission work without fail and Court Commissioner should take into consideration all such documents before completion of Commission work.

- 6) The Court Commissioner is directed to issue notices to both parties in advance informing them as to when he will carryout commission work.
- 7) Issue commission writ accordingly.

Date :- 19.11.2025

(J. M. Ambodkar)
7th Jt. Civil Judge (S.D.)
Pune.

CERTIFICATE

I affirm that the contents of this P.D.F. file Order are same, word to word, as per the original Order.

Name of Stenographer	: S.U.Javgude, (Grade II)
Court	: 7 th Jt. Civil Judge [S.D.] Pune
Date	: 19.11.2025
Order signed by the Presiding Officer on	: 19.11.2025
Order uploaded on	: 20.11.2025