

**ORDER BELOW EXH.05 IN R.C.S.NO.126/2019.**  
**( CNR : MHAH190004012019 )**

01. Plaintiff has filed this application for appointment of Court Commissioner under Order-XVI, Rule - 9 of C.P.C. with prayer that Court Commissioner be directed to get measured suit land, to fix boundaries and draw encroachment map, if any.

02. Defendant No.1 to 9 resisted the application by filing say at Exh.24 and defendant No.13 to 15 resisted the application by filing say at Exh.27.

03. Heard both sides. Perused Record.

03. Plaintiff has filed this present suit with prayer to recover 20 Are. encroached portion from defendant and for permanent injunction, not to disturb as well as suit land be measured and boundaries should be fixed.

04. Learned advocate for defendant argued that determination of boundaries and boundary dispute is required to be dealt in view Section 135 and 136 of Maharashtra Land Revenue Code, 1966. Therefore, application is not tenable. On the contrary, plaintiff argued that for the just decision of the suit, appointment of Court Commissioner is required.

05. Looking to the provision of Order-XVI, Rule-9 of C.P.C., Court Commissioner is required to elucidate matter in dispute. Plaintiff has to prove his suit by positive evidence and to prove encroachment over his land. In this suit, yet issues not framed.

Evidence not lead by any parties. Therefore, no question arise before this Court to elucidate any matter in dispute through Court Commissioner. Hence, at this stage application is justified. Therefore, for aforesaid reasons, I pass the following order :-

**ORDER**

- (1) Application is hereby rejected.
- (2) Costs to cause in suit.

Place : Shevgaon  
Date: 28/02/2020

Sd/...  
(Shrikant Ade )  
Jt. Civil Judge, Jr. Division,  
Shevgaon.