

MHAH220000582023

RCS No. 11/2023  
Devidas. vs Navnath & ors.

**ORDER BELOW EXH.31**  
(Passed on 02/05/2025)

The present application filed by defendant no.1 and 2 for appointment of a court commissioner for measurement of Gat no.442/1 ad-measuring area 0 H 50 R agricultural land situated at Dhalwadi, Tal. Karjat, Dist. Ahmednagar. (Hereinafter, it is called as 'the suit property').

2. It is contentions of defendant no.1 and 2 that the plaintiff filed the present suit for perpetual injunction against them. The plaintiff in the plaint contended that the suit property is joint property of the plaintiff, defendant no.1, 2 and 5 to 10, till today, the suit property is not partitioned. Defendant no.1 and 2 further contended that the suit property is already partitioned. Accordingly, Gat No.442/1 admeasuring area 0.11 R agricultural land allotted to the defendant no.5 Dattu, 2<sup>nd</sup> portion allotted to defendant no.6 Ganapat, 3<sup>rd</sup> portion admeasuring area 0.11 R agricultural land allotted to defendant no.2 Kisnabai and 6<sup>th</sup> portion admeasuring area 0.08 R agricultural land allotted to defendant no.7 Sampat. Later on, defendant no.2 Kisnabai gave 0.09 R agricultural land to Namdev (father of the plaintiff). Defendant no.1 and 2 further contended that the plaintiff has separate road to proceed his land and he has no concern with defendants construction. It is further contentions of defendant no.1 and 2 that it is necessary to measure the suit property to know the actual position of the suit property, therefore, for proper adjudication of the present suit measurement of the suit property is necessary. Therefore, defendant no.1 and 2 filed the present application and prayed to allowed the same.

3. The plaintiff file say at Exh.33 dated 03/03/2023, wherein, he submitted that the present application is false. The plaintiff further contended that the suit property is joint property of the plaintiff and defendants and yet not partition. Defendant no.1 and 2 are trying to collect evidence. Therefore, the plaintiff prayed to reject the present application.

4. Heard learned advocate Mr. S. J. Wakde for defendant no.1 and 2. Also heard advocate Mr. N. S. Kharat for the plaintiff.

5. Perused the record. After perusal of record it appears that the present suit filed by the plaintiff for perpetual injunction.

6. It is pertinent to note here that in any suit the court may issue a commission to make a local investigation and report thereon to the court. After perusal of the present application it is clear that defendant no.1 and 2 filed the present application on ground that it is necessary to measure the suit property to know the actual position of the suit property, therefore, for proper adjudication of the present suit measurement of the suit property is necessary. It is settled law that the court commissioner cannot be appointed for collecting evidence. It is pertinent to note here that if the present application is allowed then it will amount to collection of an evidence by appointing a court commissioner. Furthermore, the plaintiff filed the present suit for perpetual injunction. After perusal of plaint it is clear that the plaintiff prayed that restrained defendants as well as their servants, relatives and contractors from disturbing his peaceful possession over the suit property. Furthermore, it is the suit for injunction. Moreover, the present suit is not for recovery of possession. It is also pertinent to note here that defendant no.1 and 2 has not filed counter claim in the present suit. However, reasons mentioned in the present application for appointment of a court commissioner are not proper. Therefore, the present application of defendant no.1 and 2 is deserves to be rejected. Therefore, in the interest of justice I proceed to pass the following order.

**ORDER**

The present application is hereby rejected.  
(Pronounced and dictated in the open court)

Date:- 02/05/2025

Mohmad Wasim Akram  
S/o Mohmad Jalal Sheaikh  
Jt. Civil Judge Junior Division  
Karjat.