

**Regular Civil Suit Number 250/2019  
CNR Number MHAH -23-000635-2019**

**1. Madhav Nivrutti Shipalkar                   ..... Plaintiffs**

**Versus**

**1. Dipak Macchindra Shipalkar               ..... Defendants**

**ORDER BELOW EXHIBIT 5**

1.           The suit is for demarcation of boundaries and fixation of boundary marks. The plaintiffs have filed the application for appointment of Deputy Superintendent Land Record, Shrigonda as a court commissioner for local inspection of suit property described in paragraph number 1 of suit. It is stated that, the properties described in paragraph number 1 of the suit are ancestral properties of plaintiffs. Deputy Superintendent Land Record, Shrigonda has made survey of block (गट) number 172/1/1. The plaintiffs have stated that, Deputy Superintendent Land Record, Shrigonda has not measured the area of land in possession of plaintiffs out of land bearing block (गट) number 172/1/1. The plaintiffs are praying for survey of sub-blocks (पोटहिस्सा) of land bearing block (गट) number 172/1/1. Hence, the plaintiffs are constrained to file present application for appointment of court commissioner.

2.           The defendants have filed say vide exhibit 22 and stated that, the application is false and vexatious. The suit is without cause of action. Reasons are not specific. The suit is barred by principle of Order 2 Rule 2 of code of Civil Procedure, estoppel. Hence, application is to be rejected.

3. I have heard both sides at length. Upon hearing of both sides and on perusal of application vide exhibit 5, say vide exhibit 22, the following points arise for my consideration.

<b>Sr No.</b>	<b>Points</b>	<b>Findings</b>
1	Do plaintiffs entitle for appointment of Deputy Superintendent land record, Shrigonda, as court commissioner for the purpose of local inspection of suit property described in paragraph number 1 of suit ?	In the negative
2	What is order ?	The application is rejected.

**REASONS**

4. The point numbers 1 & 2 are interlinked with each other. Hence, I have clubbed them together and discussed accordingly. The plaintiffs have filed the application vide exhibit 5. The defendants have filed say vide exhibit 22 and prayed that application is to be rejected.

5. I have perused section 75 of Code of civil procedure. It reveals that, court commissioner can be issued for local investigation. I have also perused Order 26 Rule 9 of Code of civil procedure. It reveals that in suit, in which Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, the court may issue commission for investigation.

6. In present suit, the application vide exhibit 5 is for appointment of court commissioner. On minute perusal of application vide exhibit 5, it reveals that, the plaintiffs want to find out boundaries of suit property described in paragraph number 1 of suit. The suit is for demarcation of boundaries and fixation of boundary marks. The boundaries of suit property described in paragraph number 1 of suit is not point of dispute. It does not involve local investigation of suit property described in paragraph number 1 of suit for the purpose of elucidating matter in dispute. The court commissioner cannot be appointed for preparing report as per prayer of plaintiffs. The plaintiff is not coming with the case of encroachment over suit property. There is no boundary dispute between the parties. It is not at all necessary to appoint Deputy Superintendent Land Record, Shrigonda for elucidating the matter in dispute. The suit is for demarcation of boundaries and fixation of boundary marks. The plaintiffs cannot take aid of Deputy Superintendent Land Record as court commissioner for collecting evidence. The burden of proof is on plaintiffs to prove their case. In such circumstances, the application is not maintainable in eyes of law. In the result, the following order is passed.

**ORDER**

The application vide exhibit 5 is rejected.

Shrigonda  
Date -12-07-2024

Sd/-  
Smt. K. A. Katkar  
Joint Civil Judge(J.D)  
Shrigonda.

**:-CERTIFICATE:-**

I affirm that, the contents of this pdf file order are same,  
word for word as per original order.

Case No.	:-	R.C.S. No. 250/2019
Name of Stenographer	:-	Smt. S. V. Jadhav
Court Name	:-	Smt. K.A.Katkar, Jt. Civil Judge, J.D.& J.M.F.C, Shrigonda.
Date of Decision	:-	12-07-2024
Order signed by P.O. on	:-	12-07-2024
Order uploaded on	:-	12-07-2024