

ORDER PASSED BELOW EXH.28.

(Passed on 27-01-2025)

This is an application filed by the plaintiff for appointment of Court Commissioner vide section 75 of the Code of Civil Procedure, 1908 (in short 'CPC').

2. In this application it is contended by the plaintiff that, he has filed this suit for the relief of declaration and permanent injunction. In the suit, it is contended by the plaintiff that the defendant has constructed the staircase of his house by doing encroachment on public road. But, the defendant has denied the said contention of plaintiff. Further during the pendency of this suit the defendant has already completed his construction over the area shown by english alphabets 'CDEF' in plaint map. In such circumstances, with intent to bring the actual fact of encroachment on record the Court Commissioner needs to be appointed for conducting local investigation. So, this application be allowed and the Court Commissioner be appointed for doing measurement of the subject matter of this suit.

3. The defendant no. 1 has filed his say to this application at Exh. 29. In his say he has contended that, the present application is not maintainable by any law. As per section 75 of the CPC the Court Commissioner can be appointed for local investigation only. As well as Order XXVI Rule 9 of the CPC also provides if the court deems local investigation to be requisite or proper for the purpose of elucidating any matter in dispute then court can appoint a Court

Commissioner. Further this application hits by provision of Limitation Act. So, this application be rejected with costs.

4. Heard the learned respective Advocates of both parties at length. On going through overall record, it is very clear that in the suit plaintiff is contending that defendant is doing construction over the portion shown by english alphabets 'CDEF' in plaint map. Now, in present application the plaintiff has contended that the construction of defendant is already completed during the pendency of this suit. But, perusing the plaint of this suit, it appears that, in said plaint it is nowhere contended that the defendant has already completed his construction over the portion shown by english alphabets 'CDEF' in plaint map. There is no averment in plaint in respect of completion of construction of defendant. In such circumstances, in absence of such averment this application is quiet prematured and not tenable. If without such averment the Court Commissioner is appointed then no purpose is going to be served. Therefore, at this juncture, no need of appointment of the Court Commissioner. So, this application deserves to be rejected with costs. Hence, I pass the following order.

ORDER

The application Exh.28 is hereby rejected with costs.

Date : 27/01/2025.

(Mahesh S. Kale)
Civil Judge (Sr.Dn.),
Akot.