

Regular Civil Suit No. 33/2019
Alim and others -vs- Sunil Raut

ORDER BELOW EXH.62
(Passed on 29.11.2024)

The present application has been filed by the plaintiffs for appointment of Court Commissioner under Order XXVI Rule 9 of the Code of Civil Procedure, 1908.

2. It is contended by the plaintiffs that they owned the field property i.e., field bearing Survey No. 17/2, situated at village-Teosa, part-II, Tq. Teosa, District – Amravati. The field of the defendant bearing Survey No. 15 is adjacent to the field of the plaintiffs and it is towards western side of field of the plaintiffs. There is east-west Government canal way which passes from Teosa-Satargaon road. The plaintiffs used to reach till east-south corner of the field of the defendant and then turns towards northern side after using the said Government canal way. The suit way which the plaintiffs is shown by letters C D is the cart way and there is no other way available to the plaintiffs to reach their agricultural field. The defendant denied the suit way. Therefore, there is need to appoint Court Commissioner. Hence, they prayed to allow the application.

3. The say of the defendant was called. The say was filed overleaf of the application and strongly opposed it. Perused the record. Perused the application and say. Heard both sides and their learned advocates. They reiterated same as per the application and the say.

4. Taking into consideration the application, the say and submissions of advocates for both sides, the following points arise for my determination to which I have recorded my findings along with the reasons thereunder-

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Sr. No.	Points for determination	Findings
1.	Whether the plaintiffs have proved that the appointment of Court Commissioner is necessary under Order XXVI Rule 9 of the Code of Civil Procedure, 1908 ?	Yes.
2.	What order ?	The application is allowed as per final order.

REASONS

AS TO POINT NOS. 1 AND 2 :

5. Both these points are interlinked with each other. Therefore, in order to avoid the repetition of the facts and evidence, these points are taken together for discussion. The plaintiffs have filed the present application along with the affidavit. The present suit is filed for declaration and permanent injunction. The main contention of the plaintiffs is that the defendant obstructed the suit way to cultivate their agricultural field bearing Survey No. 17/2 and the plaintiffs have no other way to cultivate their agricultural fields except the suit way.

6. The learned advocate for the plaintiffs argued that appointment of Court Commissioner is required to get the facts on the record. He relied on the authority of **Malappa Bhikappa Biradar -vs- Aamsidha Bhikappa Biradar and others** [2022 (4) ALL MR 90]. I have gone through the facts and findings of the cases relied by the learned advocate of the plaintiffs. The case cited supra is applicable in favour of the plaintiffs. In the present suit, the suit way is the main dispute. The plaintiffs contended that the defendant denied them to use the suit way

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and they do not have any other way to cultivate their field. Therefore, it is necessary to have clarity regarding availability of the alternate way for the plaintiffs to cultivate their fields in order to decide the suit finally and effectively. If the Court Commissioner is appointed, it will not be the collection of evidence as per the provisions of Order XXVI Rule 9 of the Code of Civil Procedure, 1908. The objections raised by the learned advocate for the defendant are baseless and do not stand any ground.

7. Considering the facts, circumstances and the reasons mentioned in the application, it appears that the appointment of Court Commissioner for measurement of the suit property is necessary to decide issues brought before this Court by the rival parties and to prevent further multiplicity of the proceedings. In view of the above discussion, it is clear that the present application has merits and substance. **As such, point No.1 is answered in the affirmative and in answer to point No.2, the following order is passed.**

ORDER

1. The application (Exh.62) is allowed as under.
2. The Court Commissioner is appointed Order XXVI Rule 9 of the Code of Civil Procedure, 1908 for inspection of the suit way and disclosing actual situation with detail map.
3. The Court Commissioner shall inspect the spot and disclose availability of the alternate way for the plaintiffs to cultivate their fields.
4. The Court Commissioner shall inspect the suit way and to submit the report within the period of 1 month without fail.

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5. The Court Commissioner shall inspect the suit way in presence of both the parties by giving prior intimation in writing to both of them.
6. The plaintiffs shall deposit the fees of Court Commissioner as per rules within the period of 15 days from today.
7. On depositing the fees, the commission be issued to the Commissioner of the Court accordingly.

(Dictated and pronounced in the open Court).

Date : 29.11.2024.
Teosa.

(Vaibhav H. Shende)
Civil Judge (Junior Division),
Teosa.