

MHAU070024982025



ORDER BELOW EXH-59 IN RCS NO.518/2025
Shaikh Latif Shaikh Gulab Vs. Natha Suka Maghade

Present application is filed by the plaintiff to appoint Court Commissioner under Order-XXVI, Rule-9 of the Civil Procedure Code.

02. Heard Ld. Advocate for the plaintiff. It has submitted that, plaintiff is having agricultural field having Gut No.16 situated at village Manjari, Tq. Gangapur, Dist. Aurangabad. The defendant No.1 is the owner and possessor of the agricultural field having Gut No.28/1 which is at southern side of property of the plaintiff. There is no way from south side of property of the plaintiff but defendant No.1 claiming that there is way. In fact there is separate way from the southern side of the land of the defendant No.1 and he is using that way since long.

03. The defendant No.1 has deliberately with intention to trouble plaintiff started claiming the way from the northern side of the Gut No.28/1. There is dispute between parties regarding existence of the way from the southern side of the property of the plaintiff and northern side of the property of the defendant in east west direction. Therefore, to bring on record the existence of the ways claimed by both parties, commissioner is needs to be appointed. Hence, prayed to allow this application.

04. Defendant No.1 has filed say and raised strong objection to allow this application. According to him, revenue department has conducted local inspection and panchana on 23/03/2021. As per panchnama and order of the Tahsildar the alleged road is given for the defendants. The plaintiff has challenged the order of Tahsildar. The Tahsildar has held that, there is way necessary for the defendants. Hence the plaintiff is intending to collect evidence by appointing Commissioner. There is no dispute regarding encroachment over the property of the plaintiff. Plaintiff has to prove his case and wrongful obstruction by defendants. Therefore, prayed to reject the application.

05. Perused application and say. Admittedly, present suit is filed by the plaintiff to declare that he is possessor and owner of the suit property having Gut No.16. It is the contention of the plaintiff that defendant No.1 are having separate way from southern side of his land but he is claiming way from the northern side of his land, which is southern side of the land of the plaintiff. According to the plaintiff defendant No.1 is having separate way, there is no way from the Gut No.16. Therefore, he has prayed to appoint commissioner to inspect the Gut No.16,28 and submit the report.

06. The defendants are relied upon the following citations- **Shantaram Kekan Vs. Bhausahab Kekan, in W.P.No.14046 of 2021, Hon'ble Bombay High Court, bench at Aurangabad**, it has held that, the plaintiff can seek appointment of commissioner for purpose of establishment of the alleged facts of the encroachment over the suit property by defendant after conclusion of his evidence.

07. Perused record and say. No doubt this Court is having jurisdiction to appoint Court Commissioner under Order-XXVI, Rule-9 of the CPC. when there is a need of expert to decide the matter in dispute. But in the present suit plaintiff has contended that, there is no way from the southern side of his property in east west direction. Whereas defendant No.1 is claiming that way. Plaintiff has prayed to restrain defendant from causing wrongful obstruction to his possession.

08. Considering the facts and law laid down in the citation, there is no case of the plaintiff regarding encroachment at the hands of the defendants. Plaintiff has to prove his case by adducing sufficient and cogent evidence. Therefore, no substance to allow this application. Hence, order-

ORDER

Application is rejected.

Date:- 07.10.2025

(Nilesh R. Indalkar)
Civil Judge Sr. Division
Gangapur