

MHAU070026732025



ORDER BELOW EXH-34 IN RCS
NO.567/2025
Bhausahab Waykar Vs. State of
maharashtra

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, suit is filed for declaration and perpetual injunction. Defendants are adjacent land holder. They have purchased property Gut No.199 from the predecessor of plaintiff. There is dispute between parties on count of the boundaries of their respective lands. Therefore, the lands of the plaintiff and defendants are needs to be measured. The defendants have also filed suit RCS No.531/2025 for perpetual injunction and against plaintiff. Therefore, before adjudication on application of temporary injunction filed by the both parties, measurement is necessary. Therefore, prayed to appoint Inspector of land record, Gangapur as a Commissioner.

03. Ld. Advocate for plaintiff relied upon the law laid down in the case-

1. **Shantaram Dattatray Kekan Vs. Bhausahab Karbhari Kekan, Writ Petition No.14046 of 2021**, the Hon'ble Bombay High Court held that, however common threads that run through all the above decisions is as regards the principle that a Court commissioner can never be appointed to in order to enable parties to collect evidence. It is on account of this principle that in most of the cases this Court held that, even before a party has adduces his evidence, he can not seek appointment of a Court Commissioner. It all depend on the facts and

circumstances of each case. The plaintiff / respondent have instituted RCS No.186/20216 against defendant / petitioners seeking removal of possession of encroached land measuring 20 R land from suit property and injecting any encroachment by defendant.

2. *Nivrutti Sambhaji Sonwane Vs. Bhaginath Sambhaji Sonawane, Writ Petition No.10649 Of 2023*, the Hon'ble Bombay High Court held that, application for appointment of Court commissioner can be filed at proper stage.

3. *Pandit Vithal Landage Vs. Vishnu Govind Pawar and Anr., Writ Petition No.5158 Of 2024*, the Hon'ble Bombay High Court held that, whenever there a dispute regarding encroachment the commissioner can be appointed for joint measurement of the properties.

04. Defendant filed say at Exh-35 and raised strong objection to allow this application. It has submitted that, the proceeding is adjourned for argument on temporary injunction. The plaintiff has to prove his possession to seek the relief of temporary injunction. The plaintiff can not collect the evidence by appointing Commissioner. The defendants are having their land in Gut No.199. Defendants have filed suit for declaration and perpetual injunction against plaintiff, same is pending. Both suits are pending for argument on application for temporary injunction. The plaintiff has to prolonge the argument and hearing on application of temporary injunction. The plaintiff has not come forward with the case that, defendants have committed encroachment over his land. Therefore, the application for Court commissioner is not tenable. So also, proceeding is not adjourned for evidence of plaintiff. Hence, prayed to reject the application.

05. Perused application and say. Present suit is filed by the plaintiff to seek declaration in respect of sale-deeds executed by predecessor. Admittedly, plaintiff and defendants are having their respective lands in Gut No.199 situated at village, Akoli Walgaon, Tq. Gangapur, Dist. Aurangabad. Defendants have also filed RCS No.531/2025 against plaintiff for perpetual injunction and declaration. Both suits are adjourned for argument on application of temporary injunction. The plaintiff has prayed to appoint commissioner to measure the properties of the both parties. It is important to note here that, there is no pleading and contention that defendant have committed encroachment and taken possession of his land. Therefore, considering the facts with due respect, the plaintiff can not support of the law laid down supra. Therefore, at this juncture, not found just and proper to appoint Commissioner. To seek relief of temporary injunction plaintiff to prove prima facie his possession over suit property and balance of convenience lies in his favour. Therefore, no substance found in application. Hence order,

ORDER

Application is rejected.

Date:- 12.03.2026

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