

**ORDER BELOW EXH.NO. 25.**

[ Delivered on 29.03.2014 ]

1] Perused the application and say of defendants. Heard Ld. Advocate Shri. A. M. Kulkanri for plaintiff and Ld. Advocate Shri. G. M. Gajmal for defendants. Perused the record.

2] In this suit for declaration of ownership and perpetual injunction restraining the defendants from making any kind of damages to the common baandh, the plaintiff has filed this application under O. 26 R. 9 of CPC for appointment of commissioner. It is the submission of plaintiff that he is owner and possessor of the suit land shown in the plaint map. However, the defendants have been trying to break the common baandh. Therefore, it is necessary to appoint commissioner i.e. D. I. L. R, to measure the suit land and other lands of G. No. 572.

3] It is the submission of defendants that the plaintiff is in possession of his land. Ownership needs to be decided by documentary evidence and for perpetual injunction the plaintiff has to prove that efforts were made by the defendants to damage the baandh. Therefore, for deciding this dispute appointment of commissioner is not necessary. They prayed to reject the application.

4] I would like to throw light on the provisions of O. 26 R. 9 of CPC which reads as under. *In any suit in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market- value of any property, or the amount of any mesne profits or damages or annual net profits the Court may issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon to the Court,*

*Provided that, where the State Government has made rules as to the persons to whom, such commission shall be issued, the Court shall be bound by such rules.*

5] Considering the prayer clause of plaint, it is clear that ownership is required to be proved on the basis of documentary evidence. So far as injunction is concerned, the plaintiff has to prove that the defendants had tried to cause damages the common baandh. It is not the case of plaintiff that any encroachment is made by defendants on his land. It is the submission of plaintiff that defendants should not encroach upon his land. To resolve the controversy between the parties it appears to me that appointment of commissioner is not necessary. Commission cannot opine that defendants had tried to damage the common baandh. The issue of ownership will be decided on the basis of documentary evidence. The issue whether the defendants had tried to damage the common baandh and made obstruction to his possession over the suit field needs to be decided on the basis of evidence adduced by the parties. Therefore, I am of the view that the application is liable to be rejected.

**ORDER.**

1        The application is hereby rejected.

Dated : 29.03.2014.

Sd/-  
[ G.G. Bharne ]  
Civil Judge, Senior Division,  
Majalgaon.