

ORDER BELOW APPLICATIONS EXH. 27
IN RCS NO. 409/2024
(Bapu Vs. Bhagwan)

1. This is the application filed by defendant No. 1 and 2 under Order 26 Rule 9 of C.P.C. for appointment Court Commissioner.
2. Defendants contended that, plaintiff has filed map along with the plaint as well as defendants also filed map along with their written statement. In plaint and in written statement location and four boundaries of the suit field are shown different. Therefore, to find out exact location and four boundaries of the suit property Court Commissioner is required to be appointed. Therefore, they prayed to appoint Court Commissioner to find out the location, the things on the suit property and the trees over it and to find out the bandh in between field of plaintiff and defendant.
3. By filing say plaintiff opposed the application contending that, he has filed on record plaint map which shows the exact situation on the spot. The map shown by the defendant is false. Defendants have filed this application to collect the evidence and to prolong the matter. Therefore, plaintiff sought for rejection of this application.
4. Perused the record. Heard learned counsel for both the sides. They argued as per the contention taken by them in their application and say. Perusal of record shows that, this suit is filed for simplicitor injunction. Plaintiff is claiming possession over 53-R field of Gut No. 569 situated at Mouje Bangali Pimpla within the boundaries shown in para No. 1 of the plaint. As per the contention of the both parties plaintiff and defendants have purchased 80-R field of Block No. 569 vide registered sale deed No. 1434/1991 and 1435/1991 dated 17.05.1991. After purchase of 80-R each field they have given 30-R field each to their another brother Satyabhan Gadade. However, no

document is filed on record by either party by which transaction or document that 30-R each field of Block No. 569 was recorded in the name of wife of brother of the plaintiff and defendant No. 1 namely Indubai Satyabha Gadade. Thus, it appears that after purchase of 80-R each field in Block No. 569 by plaintiff and defendant No. 1 they have transferred 30-R each field to the wife of their brother. Now the dispute is regarding the part which was transferred to the Indubai Satyabhan Gadade who is not made party to this suit.

5. At this stage of proceeding this Court is not required to find out which part was transfer to Indubai Satyabham Gadade. It can be considered at the time of deciding application at Exh. 5 for grant of temporary injunction. However, at this stage this Court is only required to decide whether appointment of Court Commissioner is necessary in this suit or not. As this suit is for simplicitor injunction the plaintiff is required to prove or prima facie show his lawful possession over the suit property within the boundaries shown in his plaint. Even, for deciding the suit for simplicitor injunction on the basis of title it is not required to appoint Court Commissioner. If Court Commissioner is appointed for the purpose mentioned in this application by defendant No. 1 and 2 then it would amount collection of evidence regarding the possession of the parties to the suit which is not permissible by law. Therefore, I am not inclined to appoint Court commissioner for finding out location and actual situation of the suit property as claimed by defendant No. 1 and 2. Hence, I proceed to pass following order.

ORDER

This application is hereby rejected.

Date : 23/10/ 2024

**(S. P.Wankhade)
Civil Judge, Junior Division,
Georai**

Certificate

I affirm that the contents of this PDF file are same word to word as per original order.

Dictated on : 23/10/2024

Transcribed on : 23/10/2024

Checked & signed on : 23/10/2024

Sd/-
(V. V. Mandve)
Stenographer Grade- 3
C.J.J.D & J.M.F.C., Georai.