

**RCS No. 25/2024**

Bharat V/s. Ramesh + 1.

**ORDER BELOW EXH. 20 IN R.C.S. No. 25/2024.**

**Bharat V/s. Ramesh + 1.**

**(Dated 24/06/2024)**

1. The present application is filed by the plaintiff for appointment of court commissioner in respect of the suit property. The defendants filed say overleaf and objected the application. Perused application and say of defendants. Heard both sides.
2. It is the contention of the defendants that, they have erected construction over the suit property. Now, defendants along with their family members are residing therein. The claim of the plaintiff that, the suit property is in his possession is false. Therefore, court commissioner be appointed for local inspection with direction to call report from him about the possession of the suit property.
3. It is the contention of the plaintiff that, he is in possession of the suit property. His application for grant of temporary injunction is pending. Defendants have not filed their WS. Therefore, at this stage of the suit, appointment of court commissioner is against the established the principle of law. The defendants want to collect the evidence through court. Therefore, application be rejected.

4. On the basis of rival contention of the parties, following points arise for my determination. I have recorded my findings against them for the reasons stated below.

<b>Sr.No.</b>	<b>Points</b>	<b>Findings</b>
1	Whether court commissioner is necessary to be appointed in the present case ?	... No
2	What order ?	The application is rejected.

### **REASONS**

#### **AS TO POINT NO. 1 :**

5. The plaintiff has filed the present suit for declaration of ownership, possession and perpetual injunction. It claims to be owner of the suit property. The plaintiff also claimed to be in possession of the suit property. On the other hand, defendants have challenged the ownership as well as possession of the plaintiff over the suit property. The defendants claimed to be owner in possession of the suit property. As such, there is dispute regarding ownership as well as possession of the suit property. It is also necessary to be mentioned here that, an application (Exh. 5) filed by the plaintiff seeking relief of temporary injunction is pending. Therefore, in this backdrop appointing court commissioner will amount to collecting evidence. It is well established principle of the law that court commissioner cannot be appointed for the purpose of collecting evidence. The fact of

ownership as well as possession is to be proved by the party claiming it.

6. In Ramkrishna Santu Kakad Vs. Raojee Sandhu Kakad and another, Writ Petition No.2749 of 2012 and Chandrakant Kashinath Dike Vs. Smt. Satyabhama Dike and another, Writ Petition No.8877 of 2013, it is held by the Honourable High Court Bombay Bench at Aurangabad that, if an application for issuance of the temporary injunction is pending then, an order for appointment of court commissioner should not be passed.

7. In that view of the matter, in my opinion, the stage of the proceeding for appointment of court commissioner is premature. Therefore, point no. 1 is answered in negative.

**AS TO POINT NO. 2 :**

8. Considering the nature of the suit, the stage of the suit and above quoted legal position, application deserves to be rejected. Hence, I proceed to pass following order.

**ORDER**

1. Application is rejected with cost.
2. The defendant is directed to deposit cost of Rs. 400/- in TLSA, Lonar.

Date : 24/06/2024.

Sd/- (R.B.Hanwate)

Civil Judge Jr. Division, Lonar.

