

MHKO050026192016



R.C.S. No. 185/2016
Rajaram Champalal Bhutada
Vs.
Shobhadevi Ramavtar Jaju

Order Below Exh. 38

Defendant has filed this application for appointment of Court Commissioner as per Sections 94, 151 read with Order XLVII of the Code of Civil Procedure.

02. It is contended by the defendant that, on 09/04/2018 plaintiff has filed application (Exh. 23) for appointment of Court Commissioner. On 26/10/2018 said application was allowed. On 17/06/2019 defendant has filed application (Exh. 29). Thereafter, defendant has filed application (Exh. 34) and averred that, Block No. 13, admeasuring 275 ft. was not measured. On 14/08/2024 said application was rejected. Then on 06/09/2024 defendant filed application to measure the land as per sale deed at the hands of City Survey Officer. However, on 25/09/2024 said office conveyed that, they cannot measure the land without order of Court. Defendant has filed Sale Deed No. 964 dated 27/04/1988. However, it was not considered at the time of measurement. Hence defendant prayed that, Appellate Officer to City Survey Officer, Ichalkaranji may be appointed as Court Commissioner to measure the suit property by taking into

consideration Sale Deed No. 964 dated 27/04/1988. Hence, he prayed to allow the application.

03. Plaintiff has filed his say overleaf of the application and submitted that, application is not tenable. No such documentary evidence is filed along with this application. Hence, plaintiff prayed for rejection of the application.

04. Heard both sides.

05. Defendant has relied upon ruling of Hon'ble Bombay High Court in the case of **Kashinath Ramkrishna Chopade Vs. Purushottam Tulshiram Tekade, reported in 2005(4) Mh.L.J. 471** and **Vijay Shravan Shende Vs. State of Maharashtra, reported in 2009(5) Mh.L.J. 279**. I have gone through the same.

06. Perused record. Suit is filed for removal of encroachment and for possession. On 08/12/2017 issues were framed below Exh.21. Previously defendant has filed application (Exh. 34) to remeasure suit property by Appellate Officer. However, said application was rejected on the ground that, party has right to file appeal before Appellate Officer of concerned department. Along with list Exh. 40, defendant has filed letter issued by City Survey Officer, Ichalkaranji. Wherein it is mentioned that, they cannot make measurement without order of Court.

07. Suit is filed for removal of encroachment. Defendant has also filed Counter-claim. Therefore, in order to reach to the conclusion, I think it proper to re-measure the land at the hands of Appellate Officer. Both the parties have opportunity to cross-examine the Court Commissioner touching to the matter referred to him or mentioned in his report. Hence, application deserves to be allowed. Thus, I pass the following order.

ORDER

1. Application (Exh. 38) is allowed.
2. Nimtandar / Appellate Officer of City Survey Officer, Ichalkaranji is appointed as Court Commissioner and he is directed to measure the suit property and to bring actual and factual position by giving prior intimation to the parties and adjacent land holders and submit his report along-with measurement map within one month from date of receipt of Commissioner writ.
3. Court Commissioner is directed to take into consideration Sale Deed No. 964 dated 27/04/1988. He is further directed to show encroachment, if any in his report.
4. Defendant to pay measurement charges as per rules directly in the City Survey Office within 15 days from

today and shall inform this Court regarding payment of measurement charges without fail.

5. Issue Commission writ accordingly.
6. Both the parties are directed to appear before the Court Commissioner accordingly.
7. Parties to bear their own costs.

Ichalkaranji
Date : 21.04.2026

(Akshay R. Kulkarni)
4th Jt. Civil Judge Junior Division,
Ichalkaranji

Certificate

I affirm that the contents of the P.D.F. file judgment are same, word to word, as per the original judgment.

Name of Stenographer	Prachi P. Ichalkaranjkar.
Name of Court	A. R. Kulkarni 4 th Jt. C. J. J. D. & J. M. F. C. Ichalkaranji.
Date of Decision	21/04/2026
Order signed by the P.O. on	21/04/2026
Order uploaded on	21/04/2026