

MHKO050050612024



R.C.S. No. 351/2024
Vinayak Madhukar Acharya
Vs.
Vilas Yashwant Naik

Order Below Exh. 13

The plaintiffs have filed this application for appointment of Court Commissioner as per Order XXVI Rule 9, read with Section 75 of the Code of Civil Procedure.

02. It is contended by the plaintiffs that the suit is filed for perpetual injunction. Plaintiffs are owners and possessors of suit property. Towards the eastern side of suit property, there is 5 feet alley road. Thereafter, land of defendants viz. C.S. No. 2020 and 2021 is situated. Plaintiffs have produced maps and photographs. On perusal of same, it appears that, long back, defendants have made R.C.G. construction in C.S. No. 2020 and 2021. Defendants have filed their written statement (Exh. 11). Wherein defendants have contended that, they have made construction in C.S. No. 2022 and 2023, and that, plaintiffs have shown suit property as C.S. No. 2020 and 2021.

03. Considering the rival submissions of both parties, it is necessary to ascertain whether suit property C.S. No. 2020 and 2021

belongs to defendants or not. For that purpose, it is necessary to measure land of plaintiffs viz. C.S. No. 2016 to 2019 and land of defendants viz. C.S. No. 2020 and 2021 by the Taluka Inspector of Land Record. Measurement is required to bring on record whether suit property is independent property of plaintiffs or it is the property of defendants. It will help to decide the suit on merit. It will also help to resolve the dispute finally between parties. Hence, plaintiff prayed that T.I.L.R., Hatkanangale be appointed as Court Commissioner to make measurement as prayed in the application. Hence, they prayed to allow the application.

04. Defendant No. 1 has filed his say (Exh.15) and submitted that, application is not tenable. Suit is not filed for removal of encroachment. Plaintiffs have made confusion in respect of City Survey Number. Already, there was survey and maps are available on record. Therefore, there is no reason to prepare new map after measurement. Plaintiffs have not objected previous maps. Plaintiffs are trying to prolong the matter. Plaintiffs have not produced map of land received by Government through auction. Vague measurement cannot be done and hence, he prayed for rejection of the application.

05. Heard both sides.

06. For ready reference, I reproduce relevant provisions of law as under -

Section 75 – Power of Court to issue commissions :-

Subject to such conditions and limitations as may be prescribed, the Court may issue a commission –

- (a) to examine any person ;*
- (b) to make a local investigation ;*
- (c) to examine or adjust accounts ; or*
- (d) to make a partition ;*
- (e) to hold a scientific, technical, or expert investigation ;*
- (f) to conduct sale of property which is subject to speedy and natural decay and which is in the custody of the Court pending the determination of the suit ;*
- (g) to perform any Ministerial Act.*

Order XXVI Rule 9 – Commissions to make local investigations :-

In any suit in which 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 mense 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 person to whom such commission shall be issued, the Court shall be bound by such rules.

07. The Hon'ble Bombay High Court in the case of **Dnyandeo Vithal Salke And Others vs Dagdu Kadar Inamdar, Writ Petition No. 11390/2016, decided on 13/02/2017**, observed in para No. 2 as under-

2. *“When the suit has been filed for injunction simplicitor, I do not understand as to how the Civil Judge, Junior Division could have passed order directing appointment of T.I.L.R., with direction to submit his factual report as regards possession and user of the land. This amounts to collection of evidence which is not the object of the provisions regarding appointment of the Court Commissioner, as contained in Order 26 Rule 9 of the Civil Procedure Code. The learned Single Judge (As the Hon'ble Judge then) in the case of Sanjay Namdeo Khandare Vs. Sahebrao Kachru Khandare & Ors., 2001 (2) Mh.L.J.959 has also taken a view that appointing the Court Commissioner to submit his report regarding actual possession of the suit field would amount to making effort to collect evidence regarding possession and the same is not permissible in the law.”*

08. Perused record. Present suit is filed for perpetual injunction. There is no boundary dispute. So also, there is no dispute or prayer regarding removal of encroachment. Plaintiffs are claiming that, defendants should not cause disturbance to their peaceful possession over the suit property. Therefore, as per Sections 101 and

103 of the Indian Evidence Act, it is for the plaintiffs to prove their case on their own footing. For that purpose, appointment of Court Commissioner is not necessary. As held by Hon'ble Bombay High Court in the case of Dnyandev Salke (Cited Supra), Court Commissioner cannot be appointed to collect evidence. Therefore, application deserves to be rejected. Hence, I pass the following order.

ORDER

1. Application (Exh. 13) is rejected.
2. Matter to proceed further.
3. No order as to cost.

Ichalkaranji
Date : 16.03.2026

(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	16/03/2026
Order signed by the P.O. on	16/03/2026
Order uploaded on	16/03/2026