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Reg. Civil Suit No. 323/2012.
CNR NO.: MHKO07-000948-2012.

ORDER PASSED BELOW EXH.22

This application is filed by plaintiffs under Order 26 Rue 9 of the Code of Civil Procedure praying therein to appoint Court Commissioner to take measurement of C.S.No. 691 and 694.

2. **Facts of application in short are as under :-**

Plaintiffs have filed a suit to restrain defendants from raising construction in such a manner as causing damage to the house of plaintiff situated over C.S. No. 691. It is contention of plaintiffs that defendant is raising construction over C.S. No. 694. While demolishing old wall defendant has caused damage to the house of plaintiff situated over suit property No.1-B. It is further stated by plaintiff that as per city survey record and map, western side of C.S. No. 694 is 18 ft. but plaintiff is constructing over the area ad measuring 20 fts. While demolishing old construction, he caused some damage to the property of plaintiff also and hence in order to fix the boundaries, measurement of C.S.No. 691 and 694 through City Survey Officer is necessary. Hence, this application.

3. Defendant Nos.1 to 6 filed their say on application at Exh.22 and opposed to allow this application contending that plaintiffs have not filed affidavit in support of this application. Besides that, this application is filed by plaintiffs with sole intention to delay trial. Suit is bad in law for non joinder of necessary parties. With these submissions, they prayed for

rejection of application.

4. Defendant No. 7 filed pursis at Exh. 61 adopting say of defendant Nos.1 to 6. On last date argument of learned advocate for plaintiffs was heard and on request of defendants time was granted to argue on this application. However, today defendants and their advocate are absent. Application is pending since 15.3.2013 and suit is pending since 2012. Considering age of suit as well as of this application, I proceed to decide this application.

5. It appears that main prayer of plaintiffs in this suit, is to restrain defendants from raising construction in such a manner so as to damage wall of plaintiffs' building. It is also case of plaintiffs that defendants are raising construction in excess area than that of shown in city survey record. Defendants in their say have not given details about their construction and area owned by them. In such circumstances, in order to bring real position on record regarding construction of defendants, measurement of suit property through City Survey Officer is necessary. In result, I pass following order.

ORDER

- (1) Application is allowed.
- (2) Dy. Superintendent of Land Records, Shirol is hereby appointed as Court Commissioner to take measurement of C.S. No. 691 and 694 and fix

boundaries of both city survey numbers.

- (3) The Court Commissioner shall submit his report alongwith map and photographs in detail.
- (4) Plaintiffs shall deposit necessary fee of Court Commission in the office of City Survey itself.
- (5) Plaintiffs shall comply this order on or before next date.
- (6) In case of failure on the part of plaintiffs to comply this order, said order will stand cancelled automatically without having measurement through Court Commissioner.

Jaysingpur.
Dt.: 29.09.2018.

Sd/-
(**K.G.Sawant**)
Civil Judge Senior Division,
Jaysingpur.

