

MHKO110002192010



**ORDER PASSED BELOW EXH. 72 IN
REGULAR CIVIL SUIT NO. 40/2010
(Sou.Lina Ramakant Malu through P.O.A.
Shri.Balasabeb Appa Pujari Versus
Smt.Mangal Madhur Khot etc.7)**

Present application filed by the plaintiff to appoint Court Commission in order to record evidence of Sadanand Grupad Swami.

02. The plaintiff contended that in order to prove agreement dated: 21.05.1994 evidence of witness viz. Sadanand Gurupad Swami is necessary. However, he is 87 years old. Therefore, he is unable to come before this Court. Hence, in order to record evidence of said witness issuance of commission is necessary. Lastly, he prayed to allow the application.

03. The defendant resisted the application by filing his say on backside of the application. He contended that the plaintiff filed present application under Order XVIII, Rule 4 of Code of Civil Procedure. According to him, under said provision this application is not maintainable. Further, the plaintiff failed to file any document in support of his application in order to show that said witness is unable to come before this Court. Hence, he prayed to reject the application.

04. Heard Ld. Advocate for the plaintiff and defendant. They argued as in consonance with their application and say.

05. Perused record. It is admitted position that present application is filed under Order XVIII, Rule 4 of CPC. However, it is necessary to mention that under said provision there is no provision to appoint Court Commission. But it would be not appropriate to reject the application by adopting such hyper technical view. Order XXVI, Rule 1 empower this Court to appoint Court Commission. According to provision, the Court has power to issue commission for examination of the witness who is from sickness or infirmity unable to attend it. In view of provision if contents of present application will scan it appears that the plaintiff has not filed any medical certificate in support of his contention. However, considering age of witness it can be said that due to old age the witness unable to come before this Court. Further, P.W. No.02 viz. S.S.Shaikh in his evidence deposed that said Sadanand Swami is old aged person. Moreover, no prejudice will cause to the defendant if application is allowed. Per contra, defendant has opportunity to cross examine the witness. Indeed, having been considered all the facts with the gloss of effective discharge of the commission work I reckon to pass following order.

- ORDER -

1. The writ of commission is issued in the name of Adv.V.V.Kamlakar.
2. The commission shall be returnable with report within one month from the receipt of commission writ.

3. The plaintiff is ordered to deposit commission fee of Rs. 2000/-

Date:- 30.01.2023.

(S.D.Shirsat)
02ndJt Civil Judge Jr.Dn.
Pethvadgaon.