

MHKO110003532021



Reg. Civil Suit No. 40/2021.
(CNR No. MHKO110003532021)

ORDER BELOW EXH. 14.

01. The plaintiff made the instant application, vide Order XXVI, Rule 09 of The Code of Civil Procedure (in short 'C.P.C.').

02. It is the contention of plaintiff that, defendants are trying to erect construction of a house in the Gat no.1409. He further submitted that, he is owner and possessor of the land situated in Gat no.1409. However, defendants by committing encroachment over the land situated in Gat no.1409, trying to erect a house on the said land. So, he made the present application with the prayer to appoint T.I.L.R., Hatkanangle, to carry out the measurement of the Gat no.1409 and to bring on record the encroachment committed in the said Gat at the hands of defendants.

03. Defendants filed their say vide **Exh.24**, and denied the entire contention of the application. They further submitted that, they carrying out the construction on the land of their respective share in Gat no.1409. Plaintiff is not concern with the said construction. They further submitted that, the present suit is instituted for claiming the relief for perpetual injunction and not for removal of encroachment. So, plaintiff is not entitled to make this application with the prayer to appoint T.I.L.R. They finally submitted that, plaintiff did not claim the relief of removal of encroachment and vacant possession of encroached portion. So, present application is not tenable. They further submitted that, plaintiff itself pleaded in his plaint para

no.2 that, in the year 2001 measurement of the Gat no.1409, was carried out. So, in such situation it is not necessary to appoint T.I.L.R. to carry out the measurement of the said Gat again. They finally submitted to reject the application by imposing compensatory costs.

04. Perused the application and say thereon. Heard to both parties.

05. On perusing rival pleadings following points are arising for my consideration. I am recording my findings along with reasons thereon as follows,

| Sr. No. | Points | Findings |
|----------------|---|----------------------------|
| 1. | Whether the appointment of Court Commissioner is necessary to elucidating any matter in dispute ? | In the negative. |
| 2. | What Order. | As Per Final Order. |

As to point No.1 and 2 -

06. Before proceeding to deal with the present application it is necessary to have section 75 of the C.P.C. On bare perusal section 75 of the C.P.C. it is seen that, for the following presupposes Court commissioner shall be appointed -

- i. to examine witness;*
- ii. to make local investigation;*
- iii. To adjust accounts;*
- iv. to make partition;*
- v. to hold investigation;*
- vi. to conduct sale; or*
- vii. To perform ministerial act.*

07. It is pertinent to note here that, on bare perusal Order XXVI, Rule 9 of the C.P.C. it is seen that, Court commissioner shall be appointed when it is necessary to elucidate the matter involved in the suit. In other words elucidating means to make clarify or explain something. It is also necessary to consider here that, the dispute for elucidating of each commission is being issued must be the core question or fact in issue involved in the suit. By keeping this fact in mind, now let's deal with the present application.

08. On bare perusal the pleading of the plaintiff, it is seen that, plaintiff claiming himself as a owner and possessor of Gat no.1409, situated at Moje Kumbhoj, Tal. Hatkanangle, Dist. Kolhapur. He also came before the Court with the theory that, defendants causing to his peaceful and settled possession over the suit property, i.e. Gat no.1409. So, he instituted the present suit for seeking the perpetual injunction to permanently prevent the defendants from causing his peaceful and settled possession over the suit property and prevent them from carrying out any construction over the suit property.

09. In such scenario in the present suit, possession of the plaintiff over the suit property and obstruction to his possession over the suit property at the hands of the defendants is the fact in issue. But, by making the present application plaintiff trying to bring on record, whether or not there is any encroachment in the suit property at the hands of defendants. As, the encroachment at the hands of defendants in the suit property is not fact in issue before this Court. So, to clarify or elucidate the same, it is not necessary to appoint Court commissioner either T.I.L.R. or any other person. Hence, considering the pleading of plaintiff and relief claimed by him in the suit, I am of the candid opinion that issuance of the Court commissioner is not necessary to elucidate any dispute involved in the present suit. Hence,

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considering above discussion, I answered point no.1 in negative, and to answer point no.2, I proceed to pass the following order -

ORDER

1. Application at **Exh.14** stands rejected.
2. Application at **Exh.14**, disposed off accordingly.

Date : 05/07/2024.

(L. M. Pathan)
Civil Judge Junior Division,
Peth-Vadgaon