



Order Below Exh. 48 In RCS No. 83/2025
CNR No. :-MHKO110005422025
Passed on 01/07/2025

This is an application filed by plaintiff as per Order XXVI Rule 9 of the Code of Civil Procedure, 1908 to appoint Court Commissioner for inspection of suit property i.e., land Block No.510 situated at village Ambap, Tal. Hatkanangale, Dist. Kolhapur.

2. The defendant has filed his say on overleaf of an application and opposed the same.

3. I have read application and say. Heard learned advocate for plaintiff and defendant. I have also gone through the provision of Order XXVI Rule 9 of the Code of Civil Procedure.

4. Learned advocate for the plaintiff contended that, this is a suit filed for partition and injunction against defendants. It is further argued that, the suit property yet to be partitioned by metes and bounds among the plaintiff and defendant Nos.2 to 6. Despite the status quo order of the Court, defendant No.1 is started to construct in suit property illegally. Hence, it is necessary to appoint Court Commissioner.

5. Learned advocate for the defendants has submitted that, the application is not tenable. At this stage plaintiff can not seek for Court Commission. As per the status quo order of the Court defendant No.1 stayed the construction. By this application plaintiff wanted to collect the evidence. Hence, this application is not tenable and liable to be rejected.

6. This is the suit for partition and perpetual injunction against defendants. As per Order XXVI Rule 9 of the Code of Civil Procedure, the Court Commission can be appointed for the purpose of elucidating any matter

in dispute. In the present suit, the dispute is not seen which needs to elucidate the matter. The suit is filed for partition, simplicitor injunction suit and not for encroachment. It is settled principal of law that in simplicitor injunction suit, Court commissioner could not be appointed.

7. Moreover, considering the contents of the application it seems that by this application evidence can be collected as the real situation at the suit property will come on record. It is settled law that for collection of evidence Court Commissioner can not be appointed. Therefore, considering all above the reasons, the prayer of plaintiff for inspection of suit property by appointing Court Commissioner is liable to be rejected. In the result, I pass following order.

ORDER

1. The application (Exh. 48) is rejected.
2. No order as to costs.

Peth-Vadgaon.
Date : 01/07/2025.

(J. N. Bhasme)
Jt. Civil Judge, Junior Division,
Peth-Vadgaon.

C E R T I F I C A T E

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

Name of the Stenographer	S.M.Shaikh, Steno Grade.III
Name of the Court	Smt. J. N. Bhasme. Jt. Civil Judge Junior Division, Peth Vadgaon
Date of order/Judgment	01/07/2025
Judgment signed by the P.O on	01/07/2025
Judgment uploaded on	01/07/2025