

MHKO110008442012

**Reg. Civil Suit No. 333/2012****Order Below Exh. 162****Nana Shiva Kambale and Ors.****Vs.****Hirabai Rangrao Kambale and Ors.**

The present application is filed by the plaintiffs under Order 26 Rule 9 of CPC for appointment of the T.I.L.R. as a Court Commissioner in order to submit the report regarding past and present situation after partition of the suit property has taken place. The defendants have filed their say at Exh. 163 on the said application and strongly objected to it.

**02.** Perused the record. Heard the Ld. advocates for both sides.

**03.** The Ld. advocate for the plaintiffs submitted that, the plaintiff and defendant's sister Bayakka Varane had filed R.C.S. No. 113/2013 for partition and separate possession. It is decided on merits. As per the order, Bayakka Varane has accepted 1/5th share in the well, electric motor and pipeline of Gat no. 213. Thereafter, the suit property was partitioned. The plaintiffs are in possession of alleged area of suit property. However, the defendants claim that they are in possession of alleged area of suit property. Additional issue was framed on 17/02/2026. It is necessary to see whether the description of suit property has changed or not. The appointment of court commissioner is necessary. Hence, they prayed to allow the application.

**04.** The Ld. advocate for the defendants submitted that, the

present application is not tenable in eyes of law. The present suit is filed 13 years ago. Thereafter, issues were framed and matter is adjourned for final argument. The application is not filed within limitation. The plaintiff and defendant's sister is not a party to the suit. The application is filed to harass the plaintiffs. Hence, they prayed to reject the application.

**05.** The present suit is filed by the plaintiffs against the defendants for declaration and perpetual injunction. The present application is filed after the matter was posted for final argument. The plaintiff has sought relief against the defendants in respect of taking water from the well, motor and pipe line as held commonly by plaintiffs and defendant.

**06.** On perusal of the cross-examination of the plaintiff no. 1 at Exh. 20 it appears that, he admitted that, the north-south strips of land partitioned are wrongly mentioned as per the map of Gat no. 213 filed by him below Exh. 39. He has further admitted that, it was necessary to mention in the map that, the stripes of land partitioned are situated in east-west direction. Also, the alleged well is not in the share of plaintiff no. 2, it is in the share of Rangrao Kambale i.e. predecessor of the defendants. Prima facie it appears that, the well is situated in the share of land allotted to Rangrao Kambale.

**07.** The alleged point of dispute between the plaintiffs and the defendants is in respect of share in the common well for drawing water it is not in respect of in whose property it is situated. Moreover, Bayakka Varane is not a party to the suit. Even if it is considered that the property is partitioned in R.C.S. no. 113/2013, then it is not so that the partition has changed the position of Well. As the position is

already admitted in cross-examination of the plaintiff no. 1 Nana Shiva Kambale, there is no need to appoint Court Commissioner at such a belated stage. The present application is nothing but a dilatory tactic to delay the filing in the suit. No prejudice or loss will be caused to the plaintiff, if the present application is rejected. Every litigating party approaches the court for getting relief. Therefore, it is not necessary to impose costs on the plaintiff. Hence, in the interest of justice, following order is passed :-

### **ORDER**

1.	The present application at Exh. 162 is hereby rejected.
2.	No order as to costs.

Peth-Vadgaon  
Date : 10/03/2026

sd/-  
( R. S. More)  
3<sup>rd</sup> Jt. Civil Judge, Jr. Dn., Peth-Vadgaon