



ORDER BELOW EXH. 26 IN R.C.S.No.
05/2026

Sunil Narayan Kamble Vs. Bhikaji Shivaji Ingale etc.03

CNR – MHKO130000262026

01. The present application is filed by the plaintiff under Section 75 & Order 26, Rule 9 of the Code of Civil Procedure, 1908 (*In short 'C.P.C.'*) for measurement of the properties purchased by plaintiff and defendant nos. 1 to 3 at Gat no. 714 situated at Mouje Senapati Kapashi, Tal. Kagal, Dist. Kolhapur vide Court-commissioner.

02. Perused the application and say of defendant nos. 1 to 3 (Exh. 35 to 37). Vide order below Exh. 1 the present suit is proceeded ex-parte against the defendant no. 4. Inspite of sufficient time and opportunity has been given to the defendant no. 4, he failed to appear and file his say. Hence, the present application is proceeded without say of the defendant no. 4. Perused the record of the case and documents filed by both the parties. Heard the learned advocate for the plaintiff and defendant nos. 1 to 3 at sufficient length.

03. Perused the record of the case. On perusal of the record, it appears that the present suit is filed by the plaintiff for fixation of the boundaries and perpetual injunction. Moreover, plaintiff also prayed for the temporary injunction for restraining the defendant no. 1 & 3 for constructing at the suit property and restraining defendant no. 2 from encroaching at the property of the plaintiff by illegally erecting the poles by encroaching at the plaintiff's property. In the present matter, plaintiff also filed the separate application for interim injunction vide Exh.5 and at the

time of argument of the application Exh.5, plaintiff has submitted the present application and prayed for allow the application or decide the application prior to the application below Exh.5.

04. Vide the present application, plaintiff has submitted that plaintiff has filed the suit for fixation of boundaries of the properties of the plaintiff and defendant at Gat no. 714 and for perpetual injunction. Defendant nos. 1 to 3 has constructed their house and encroached at the boundary of the property of the plaintiff. For just decision of the case, plaintiff prayed for appointment of the Court-commissioner accordingly.

05. In the present context, it is necessary to have a look over the main relief claimed by the plaintiff vide the present suit. Plaintiff prayed for i) appointment of the Court-commissioner for fixation of the boundaries of the suit property and for direction to the defendant for possession according to the fixed boundaries, ii) for perpetual injunction against the defendant from obstructing and disturbing peaceful possession of the plaintiff at suit property as per the fixed boundaries.

06. More importantly, it is significant to note that the application is completely silent about i) from which side or exact portion in which defendants are encroached upon the property of the plaintiff, ii) exact measurement and description of the property which is to be measured by the Court-commissioner, iii) no boundaries are mentioned regarding the property which is to be measured. Furthermore, it appears that 7/12 extract of Gat no. 714 depicts the names of many persons alongwith plaintiff and defendants. Admittedly, all the co-sharers of Gat no. 714 are not

party to the present suit.

07. As per the contention of the plaintiff, vide the sale-deed dated 15.01.2015, plaintiff has purchased property admeasuring 0H. 0.1 R out of Gat no. 714 from defendant no. 4. Vide the sale-deed dated 12.04.2016, plaintiff has purchased the area admeasuring 0.01.25 H.R. out of Gat no. 714 from Mr. Amrut Rajaram Dhonukshe. More importantly, it also appears that vide the notarized agreement dated 25.06.2019 defendant nos. 1 to 3 alongwith the other persons has purchased lands out of Gat no. 714 from defendant no. 4. Furthermore, it also appears that plaintiff vide agreement dated 14.01.2009 possessed the area admeasuring length 56 feet and width 19 feet out of Gat no. 714. Prima-facie it appears that boundaries of suit property mentioned in the suit and the alleged sale-deed, agreements are somewhat different.

08. More importantly, application for interim injunction is yet to be decided. It appears that, the suit is at the stage wherein issues are yet to be framed, trial is yet to begin. Thus, earlier at this stage, if the application is allowed, then it will amount to collect the evidence at the hands of Court. It is well settle law that the Court-commissioner can not be appointed for collecting the evidence. Through the present application, plaintiff wants to appoint Court-commissioner for collecting evidence regarding the possession of the suit property. More importantly, plaintiff prayed for measurement of the property of the plaintiff and also defendant no. 1 to 3. Admittedly, properties of the defendant no. 1 to 3 are not suit property and there are many co-sharers at Gat no. 714.

09. Considering all these factual & legal aspects, there is no any justifiable ground has been mentioned by the plaintiff in the present application. In such a factual aspects, this application is not tenable at this stage. Considering all these factual & legal aspects, the application is deserved to be rejected. Hence, I proceed to pass the following order:-

ORDER

The application (Exh.26) is rejected.

Kagal.
Date: 04/05/2026.

(Smt. Pranita Suhas Patil)
Jt. Civil Judge Jr. Division Kagal.