

**ORDER BELOW EXH. 126 IN R.C.S. NO. 29/2006****Abdul-Rahim Gous Mulla Vs. Shri Ahamad Gous Mulla**

This is the suit for partition and separate possession. By application filed at Exh. 126, vide Rule 1 of Order XXVI of the Code of Civil Procedure, 1908, the defendants No. 1 and 2-a have prayed for appointment of Court Commissioner for examination of witness. In the application it is contended that, defendant No. 1 is of 95 years of age at present and he has ailments such as diabetes and high blood pressure. Therefore, defendant No. 1 is unable to make normal movements. After every 10 to 15 minutes he is required to go urinal. For these reasons the defendant No. 1 is unable to remain present before the Court to tender his evidence for himself and for defendant No. 2. Therefore, the defendants No. 1 and 2 have prayed accordingly. Application is supported with the affidavit of defendant No. 1.

2. By filing say on backpage of the application itself. Plaintiffs have resisted the application of the defendants and prayer made therein. Plaintiffs have contended that, defendant No. 1 has led his evidence in the proceedings through his power of attorney and if at all defendant No. 1 wants to give his evidence, his examination in chief can be recorded in the Court and for the purpose of his cross-examination Court commissioner may be appointed. However, the plaintiffs have prayed to reject the application.

3. Heard Adv. Shri. V.B. Kadukar for defendants No. 1 and 2-a and Adv. Shri. S.S. Kot for the plaintiffs.

4. Apparently, it seems that, defendant No. 1 is of age of more than 90 years and as regards his age plaintiffs have no protest. It is matter of common sense that a person aged of 90 years or more usually has many

physical ailments. If defendant No. 1 suffers diabetes, it may be very difficult for him to stand in witness box for long time as such patients require to go to urinal frequently. For these and such other causes only, the Legislature has made provision to examine witnesses through Court commissioner. As such, this Court is satisfied with the contents of the application and accordingly application must succeed. In consequence, I proceed to pass following order.

### **ORDER**

The application at Exh. 126 is allowed as under.

Adv. Shri. N.G. Ajarekar is hereby appointed as Court commissioner in this matter to do and perform following tasks:-

(A) The Court commissioner shall record examination in chief and cross-examination of witness defendants No. 1 and 2-a i.e. of defendant No. 1.

(B) The Court commissioner shall fix a date of such examination of witness and communicate to all the parties to the proceedings and obtain their acknowledgment of such receipt of such communication. The Court Commissioner is put at liberty to send such communication to the parties by registered post with acknowledgment due, well in advance, at least 3 days in advance of such date.

(C) The Court commissioner shall refrain himself from deciding any objection touching to the legal aspects, raised by either side, during the course of such examination of the witness and he shall refer such objection/s to this Court for decision on such objections. However, by keeping open such objections, the Court commissioner shall complete the work of commission.

(D) The Court commissioner shall submit his report within 20 days from the date of receipt of commission letter alongwith memorandum of evidence of witness recorded by him.

(E) The Court commissioner is permitted to carry the original Record and Proceedings of suit R.C.S. No. 29/2006 on the date of examination of the said witness and return it to the Court as it was

received from the Court.

The plaintiffs shall pay Rs. 2000/- to the Court commissioner towards his fees.

Issue commission letter in the name of Court commissioner after the plaintiffs deposit/pay the above Court commissioner fees.

**Chandgad**  
dt.18/11/2021

**Sd/--**  
**(Amrit C.Birajdar)**  
Civil Judge Junior Division, Chandgad

**CERTIFICATE**

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	Shri. P.W. Ghodekar, L. G. Stenographer.
Name of Court	Shri. A. C. Birajdar, Civil Judge, Junior Division and Judicial Magistrate, First Class, Chandgad.
Date of Dictation	18/11/2021
order signed by the P. O. on	18/11/2021
order uploaded on	22/11/2021