

**ORDER BELOW EXH. 17 IN R.C.S. NO.87/2016**

Shri. Shankar Krishna Patil, etc. Vs. Smt. Leela Ranba Patil.

This is the suit for possession and perpetual injunction. By application filed at Exh. 17, vide Rule 9, Order XXVI of the Code of Civil Procedure, 1908, the plaintiffs have prayed for appointment of Court Commissioner to visit the suit property and submit his report after observing factual situation of it. In the application it is contended that, after filing of the present suit, the defendants hurriedly completed construction of the house in the suit property i.e. after passing of an order of this Court on Exh. 5 thereby issuing show cause notice to the defendant. In the written statement, the defendants have contended that, they have completed construction of the house. In order to bring this factual position before the Court, Court Commissioner is required to be appointed. Thus, prayed accordingly. The application is supported with the affidavit of the plaintiff No. 1.

2. The application is strongly contested and objected by the defendants by filing their say at Exh. 20. The defendants have denied all the contents of the application and further contended that, the defendants have completed the construction before institution of the present suit and question of raising construction after receipt of show cause notice by the Court does not arise and thus, contention of the plaintiffs in this regard is false. According to the defendants, by moving this application, the plaintiffs are in attempt to collect evidence with the help of the Court. With these submissions, the defendants prayed to reject the application.

3. Heard, Adv. Shri. V.R. Patil, for the plaintiffs and Adv. Smt. C.S. Patil, for the defendants.

4. Before deciding the present application, it is necessary to see pleadings of both the parties. In short, it is the averment of the plaintiffs that, the suit property is, along with all other lokalu Gavade family members, belongs to the plaintiffs and it is being used by them. In Village Panchayat record, the suit property is shown in the name of the plaintiffs. According to the plaintiffs, the defendants have no concern with the suit property and despite it they started construction over it by applying their muscle power. On the contrary, the defendants have denied the title of the plaintiff over the suit property and they have contended that, village properties No. 226/2 and 226/2B belong to the defendants and they are in actual possession of the said properties. The defendants have constructed a new house in village property No. 226/2 where previously house was there. The plaintiffs have no concern with it. The defendants have already completed the construction. From the nature of the suit, the suit appears to have filed by the plaintiffs in representative character. Thus, the plaintiffs have *no locus standi*.

5. Admittedly, though the property described in the plaint has a tax assessment extract, but the concern Village Panchayat has not allotted any property number to it whereas, other concerned properties have Village Panchayat property numbers. It is a further admitted fact that, there is no map showing locations and measurements of the properties, with the Village Panchayat. In absence of any basic documents to show the official measurement of the properties, it is highly impossible for the Court Commissioner to visit the suit property and to determine that which property belongs to whom. When the defendants have specifically admitted that they have completed the construction in the suit property, nothing further remains to be ascertained by the Court either by itself or through the Court Commissioner. The plaintiffs have also not disputed the contention of the

defendant regarding the alleged fact of completion of construction by the defendants. In this backdrop, it will be totally fruitless to appoint Court Commissioner for prayed purpose. Thus, the application is devoid of merits and it must fail. Hence, following order.

**ORDER**

The application at Exh. 17 stands rejected.

No order as to costs.

**Chandgad**

dt.18/09/2019

**(Amrit C.Birajdar)**

Civil Judge Junior Division, Chandgad

**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     | Shri. V.G. Kamble, L. G. Stenographer.                                                                   |
| Name of Court                | Shri. A. C. Birajdar,<br>Civil Judge, Junior Division and Judicial<br>Magistrate, First Class, Chandgad. |
| Date of Dictation            | 18/09/2019                                                                                               |
| order signed by the P. O. on | 18/09/2019                                                                                               |
| order uploaded on            | 19/09/2019                                                                                               |