


MHKO140006932025 	REGULAR CIVIL SUIT NO.165/2025 Vhalyappa Rudrappa Kamble & Ors. Vs. Piyedad Jokishaver Diyos
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ORDER BELOW EXHIBIT- 26

Passed on- 13/11/2025.

1. This is an application filed by plaintiffs for appointment of Court Commissioner under Order 26 Rule 9 and Order 39 Rule 7 of the Code of Civil Procedure and thereby it is prayed to appoint Commissioner for the measurement of suit property Gat no.727.
2. It is submitted that, the plaintiffs have filed present suit for declaration, mandatory injunction and perpetual injunction. The defendant has filed written statement and pleaded that he is carrying out construction in Gat no.663. Therefore, it is to be decided in which Gat number the said construction is going on. Therefore, the T.I.L.R. is to be appointed as Court Commissioner for the measurement of Gat no.727. If the application is allowed, then the defendant will not suffer any loss or prejudice. On the contrary the report of Court Commissioner will help in deciding the matter on merit. Hence, present application.
3. On the other side the learned advocate for defendant filed say and raised strong objection. The plaintiffs have no locus to file present suit as their land is not situated adjacent to the defendants land. The application is not tenable as it is against the principle of law and it has no sanction of law. The contents of plaint, the affidavits are false. The measurement of Gat no. 727 is already conducted the and plaintiffs have suppressed this fact. It is submitted that, the matter is pending for the order on Exh.5 as both parties have conducted argument on the application below Exh.5. At this

stage the present application is not tenable as it is premature and filed with intention to collect the evidence. It is submitted that, the defendant is carrying out construction in Gat no.663 and if the said construction is stayed then the defendant will suffer irreparable loss. Hence, at this stage it is necessary to decide the application filed on Exh.5. Accordingly, it is submitted to reject the application with costs.

4. Perused the record. Heard learned advocate for both side. Following are the points for determination along with my findings and reasons thereon.

Sr. No.	Points	Findings
1	Whether local investigation is necessary for the purpose of elucidating the matter in dispute?	Yes.
2	What order?	As per final order.

REASONS

As to point no.1:-

5. The learned advocate for the plaintiffs argued that, the dispute is in respect of the encroachment and factual position will be come on record after measurement of the suit property. He argued that, the disputed encroachment is in the Gat no. 727 and this fact can be proved only by way of measurement. He prayed to allow the application. On the other side, the learned advocate for the defendant argued that, this application is not at all tenable and this cannot be allowed as per provision of law. He argued that it is against the principle of law and natural justice. He argued that, the application for appointment of court commission cannot be

entertained when the application for temporary injunction pending for order. He argued that, if the application is considered and construction is stayed then the defendant will suffer irreparable loss. He argued that, if the encroachment is found in the measurement then, the defendant is ready to remove it and he is ready to file undertaking regarding the same. Accordingly, it is prayed to reject the application.

6. Perused the record. It is matter of record that, the application for temporary injunction is pending for order and at that time the plaintiffs have filed present application. The learned advocate for the defendant mainly raised objection that, the application is not tenable at this stage and the temporary injunction application needs to be considered on the basis of prima-facie consideration. However, in the given facts, it is necessary to see whether the court commissioner can be appointed as prayed. This application is filed as per provision of order 39 Rule 7 r/w order 26 Rule 9 of the Code. **Order 39 Rule 7** of the Code provides that, the court may on the application of any party to a suit and on such terms as it thinks fit, make an order for the inspection of any property which is the subject matter of such suit, the court may allow any observation to be made or experiment to be tried, which may seem necessary or expedient for the purpose of obtaining full information. So, it is clear that, the inspection or experiment of any subject matter can be allowed for getting the information about the land in dispute. The application under aforesaid order can be tenable at any stage.

7. *Moreover, Order 26, Rule 9 of the Code provides that, in any suit in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, the Court may issue a Commission to such person as it thinks fit directing him to make such investigation and to report thereon to the*

Court.

8. In view of aforesaid provision it is clear that, if the local investigation of the suit property is necessary for the purpose of elucidating the matter in dispute, then the court commissioner can be appointed. So, it is necessary to see that whether in the present case the Court Commissioner is to be appointed at this stage. It is matter of record that, the plaintiffs have filed present suit for declaration, mandatory injunction and perpetual injunction. The defendant appeared and filed say to the application below Exh.5. It is also seen that, add interim ex-parte injunction is granted in favour of plaintiffs and the disputed construction is stayed till the next date. However, said interim injunction is extended till today.
9. On perusal of the contention of the both said. It is seen that, the alleged construction is not disputed. The construction is it's base level and not completed. It is also seen from the pleadings of both side that there is dispute at whether the said construction is going on in Gat no.727 or in Gat no.663. According to plaintiffs, the defendant has encroached in the Gat no.727 and carrying out illegal construction. Whereas according to defendant he is carrying out construction in his own property situated in Gat no.663. So, at this stage material question for consideration is that **whether the said construction is going on in Gat no.727 or 663.** The nature of disputed fact is such that cannot be decided by considering the oral or documentary evidence. The issue of encroachment needs to be decided by way of measurement by the expert of concern department. In the given fact if the measurement of Gat no.727 is carried out and boundaries are fixed then it will come of record, whether the construction is going on in Gat no.727 or not. It will help in deciding the matter on merit. According, to defendant the application is filed at premature stage. But I am of the view that,

there is clear dispute regarding encroachment and it is to be seen that, whether the construction is started in Gat no.727 and 663. If the inspection of Gat no.727 is permitted then the picture will be clear and factual position will come on record. It will not result the collection of evidence. Because issue of encroachment is involved in the present suit. It is seen that, the measurement of Gat no. 727 is already conducted and map prepared by T.I.L.R. is filed on record by the defendant. Therefore, at this stage it would be sufficient to direct the fixation of boundary of Gat no.727 and to find out whether the said construction is going on in Gat no.727 or not. Moreover, it is not clear from the said map that, whether the construction is going on in Gat no. 727 or in Gat no. 663. Hence, I am of the view that, if the application is allowed then no prejudice will be caused to the defendant which cannot be compensated in any terms. The application for extension of status quo is decided separately. Direction needs to be given to carry out commission work as early as possible. Thereafter, the application under order 39 Rule 1 and 2 can be decided. Hence, I pass following order.

ORDER

- I. Application is allowed.
- II. The Deputy Superintendent of Land Record of Chandgad is appointed as Court Commissioner.
- III. The Court Commissioner to fix the boundaries of Gat no.727 situated at Hosur, Tal. Chandgad, Dist. Kolhapur (Suit property as described in Para 1 of the present application) and to inspect that, **whether the said disputed construction is going on in Gat no. 727.**
- IV. The Court Commissioner to carry out Commission work of aforesaid property, after serving notice to both parties and after obtaining necessary documents and relevant record in respect of the suit property.

- V. The Court Commissioner shall conduct the measurement on or before 15.12.2025 and file detail report as to measurement, encroachment construction if any along with a map and report to this Court.
- VI. Plaintiffs to bear the charges of measurement of the suit property. Plaintiffs are directed to comply the order and follow up the Commission work so as to it will done as early as possible i.e. within a month.

Date:13/11/2025

[Waman D. Jadhav]
Jt.Civil Judge Junior Division, Chandgad.
[Judge Code- MH3143]