

MHKO160001182019 	<u>R.C.S. No. 20/2019</u> <u>(Aananda Vs. Dattatraya)</u>
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ORDER BELOW EXH.13

(Date : 28.06.2019)

This is an application filed by plaintiffs under Order 26 Rule 9 of the Civil Procedure Code for appointment of court commissioner for inspection of Gat No.391/A and 391/B situated at village Pishavi, Tal.Shahuwadi, Dist.-Kolhapur.

2. It is contentions of plaintiffs that, plaintiffs filed this suit for perpetual injunction. Suit properties are situated adjacent to defendants property. On 7/12 extract of suit properties, the name of predecessors of plaintiffs is mentioned in the cultivator column and there is no relevancy of defendant with suit properties. Property of defendant is situated at Western side of the suit properties. Now defendant is trying to encroach 3 foot land from western side by making measurement and digging pits. Therefore, plaintiffs wants to appoint T.I.L.R. Shahuwadi as a court commissioner to inspect whether defendant made encroachment over the suit properties or not and submitting report. Hence prayed to allow said application.

3. Defendant filed his say and denied all the contention of plaintiffs. He further contended that, in this suit *ex-parte* order against defendant is already passed below Exh.1. Therefore, he intentionally prolonging this matter, hence he prayed to reject the application.

4. Heard Ld. Advocate for plaintiffs and Id. Advocate for defendant.

5. From above discussion it is clear that, plaintiffs filed this simplicitor suit for perpetual injunction. They filed copies of 7/12 extract of suit properties.

6. As per Order 26 Rule 9 of Civil Procedure Code "*in any suit court can appoint a court commissioner for local investigation for elucidating matter in dispute*".

7. Here, subject matter in dispute Gat Nos.391/A and 391/B are situated at village Pishavi, Tal.Shahuwadi, Dist.-Kolhapur is on the name of Vitthal Dev Vyavasthapak, but plaintiffs have not filed any document on record which shows that, in which capacity they have filed this suit. But plaintiffs want to appoint court commissioner to inspect whether defendant made encroachment over the suit properties or not and to bring on record the existing condition of suit properties. Plaintiffs have not contended in this suit how much land was encroached by defendant. According to them, defendant is trying to encroach the 3 foot land over the suit properties. Similarly plaintiffs have not specifically mentioned in this application from which Gat number defendant is encroached 3 foot land. Therefore, inspection of Gat Nos.391/A and 391/B is indirectly inspection of factum of possession. It is well settled principle of law, that commissioner can not be appointed for inspection of factum of possession, it amounts to collection of evidence. If plaintiffs are owners and possessors of suit properties, then they have to prove their possession by adducing evidence not by appointing court commissioner. Therefore said application is liable to rejected. Hence, I pass following order:-

Order

1. Application is rejected.
2. Cost in cause.

Date : 28.06.2019.

sd/-
(Smt.R.A.A.Khatib)
Civil Judge Jr. Division,
Malkapur-Shahuwadi.

CERTIFICATE

I affirm that the contents of this [P.D.F.](#) File judgment are same, word to word, as per the original judgment.

Name of the Stenographer	Shri.S.M.Sutar
Name of Court	Smt.R.A.A.Khatib, C.J.J.D & J.M.F.C. Malkapur-Shahuwadi.
Date of Dictation	28/06/2019
Judgment signed by the P.O.on	28/06/2019
Judgment uploaded on	01/07/2019