

MHKO180000252026



**ORDER BELOW EXH.33 IN R.C.S.No.08/2026**  
**(Sikandar Mujawar and Ors. v. Mujjamil Shaikh**  
**and Ors.)**

Plaintiffs have filed present application under Order XXVI Rule 9 of the Code of Civil Procedure ('the CPC') seeking appointment of Court Commissioner for joint measurement of the suit property, property of plaintiff No.2 and Eastern road.

02. In short, plaintiffs contended that, this is a suit for perpetual and mandatory injunction. Defendant No.1 is owner of Grampanchayat property No.384/A/4 admeasuring 92.92 sq.mtr., more specifically mentioned in paragraph No.1 of the plaint (in short 'the suit property'). Defendant No.1 is unlawfully carrying out construction in the suit property without obtaining requisite permission from the Grampanchayat. Moreover, while carrying out construction in the suit property, defendant No.1 has committed encroachment upon the road situated at Eastern side of the suit property. When the Grampanchayat officials visited the suit property and prepared panchanama it found that, defendant No.1 is carrying out construction in land admeasuring 99.22 sq.mtr. In fact, the suit property is admeasuring 92.92 sq.mtr. Thus, defendant No.1 is carrying out construction beyond the land of his ownership. Hence, plaintiffs constrained to file present suit. The suit is pending for hearing of temporary injunction application (Exh.05) wherein plaintiffs have sought for restraining defendant No.1 from carrying out unlawful construction in the suit property and from committing encroachment upon the road. Plaintiffs have also prayed that, defendant No.1 may be directed to remove encroachment from the road.

03. In order to arrive at a just decision of temporary injunction application (Exh.05), it is essential to bring on record actual position of the suit property. Hence, plaintiffs have filed present application. It is prayed that, Civil Engineer Shri. Akshay Ajit Patil and any Civil Engineer of choice of defendant No.1 may be appointed as Court Commissioners for carrying out joint measurement the suit property, it's adjacent Grampanchayat property No.384/A/5 owned by plaintiff No.2 and Eastern road. It is also prayed that, Court Commissioners may be directed to fix boundaries of the suit property and Grampanchayat property No.384/A/5. It is further prayed that, the Court Commissioner may be directed to submit detailed report of the inspection and to show encroachment, if any, upon the Eastern road. Plaintiffs also prayed that, defendant Nos.2 and 3 may be directed to remain present at the time of the commission work.

04. Defendant No.1 has strongly resisted present application by filing his say vide Exh.34. He contended that, the application is devoid of merits. He further contended that, in absence of Government map showing boundaries of the suit property and Grampanchayat property No.384/A/5, Civil Engineer can not fix boundaries of said properties. Hence, he prayed that, the application may be rejected. He alternatively contended that, if the Court comes to the conclusion to allow present application, Civil Engineer Sharad Aannappa Digraje may be appointed as Court Commissioner for joint measurement of the suit property and Grampanchayat property No.384/A/5.

05. Defendant Nos.2 and 3 have filed their say vide Exh.36 contending that, they have no objection to allow present application.

06. Heard learned advocates for both the parties, at length. They have argued in consonance of their contentions.

07. It is well settled that, no point which can conveniently and ought to be substantiated by the parties by evidence at the trial shall be referred to the Commissioner. The object of Order XXVI, Rule 9 of the CPC is not to assist a party to collect evidence where it can get the evidence itself. The object is for elucidating any matter in dispute by local investigation at the spot. Moreover, it is also well established that, the report of a Court Commissioner is not binding on the Court which has to be appreciated along with other evidence on record.

08. In the backdrop of above-referred well settled principles of appointment of a Court Commissioner, it is necessary to evaluate merits of present application.

09. On perusal of record and proceeding it appears that, this is a suit for perpetual and mandatory injunction. The suit is pending for hearing of temporary injunction application (Exh.05). By way of temporary injunction application (Exh.05), plaintiffs have prayed that, defendant No.1 may be directed to remove encroachment from the road. Thus, plaintiffs have sought for interim mandatory injunction against defendant No.1. On perusal of pleadings of both the parties, prima facie it appears that, there is a serious dispute regarding alleged construction of defendant No.1 in the suit property. As per panchanamas drawn by the Grampanchayat on 23.09.2025 and 31.12.2025, defendant No.1 is carrying out construction in the land admeasuring 99.22 sq.mtr. According to plaintiffs and defendant Nos.2 and 3, defendant No.1 has committed encroachment upon Eastern road while carrying out construction in the suit property. According to plaintiffs and defendant Nos.2 and 3, suit property owned by defendant No.1 is admeasuring 92.92 sq.mtr. however, he is carrying out construction in 99.22 sq.mtr. land. Defendant No.1 has denied

construction beyond the suit property. Thus, at the face of record it appears that, there is a serious dispute regarding alleged construction of defendant No.1 in the suit property.

10. While dealing with the provisions of Order XXVI, Rule 9 of the Code of Civil Procedure, in the case of **Yeshwant Bhaduji Ghuse v.s Vithobaji Laxman Ladekar [2010(2) ALL MR 694]**, the Hon'ble Bombay High Court has held that :-

“The Court has discretion to order local investigation. The object of locate investigation is not so much to collect evidence which can be taken in the Court, but to obtain evidence which from its peculiar nature can only be had on the spot. Cases of boundary disputes and disputes about identity of lands are instances when a Court should order local investigation under Order 26, Rule 9 of the Code. In order to determine whether there has been an encroachment, it is always desirable to get the fields measured by an expert and find out exact area encroached upon, oral evidence cannot conclusively prove such an issue.”

11. In view of the decision of the Hon'ble Bombay High Court in the case of **Yeshwant Bhaduji Ghuse (Supra)**, it is well settled that, in case of dispute relating to the boundaries and encroachment, in order to finally and effectually decide the suit, it is always desirable to have measurement of the suit property by a Commissioner.

12. In the case at hand, plaintiffs have contended that, defendant No.1 has encroached upon the Eastern road while carrying out construction in the suit property. It is admitted by both the parties including defendant Nos.2 and 3 i.e. Sarpanch and Gramsevak, respectively, of the Grampanchayat that, Government map showing boundaries of the suit property is not available. All holders in City

Survey No.384/A are not parties to the present suit. In such circumstances, considering peculiar facts and circumstances of the case in hand as well as in view of reliefs sought in temporary injunction application (Exh.5) and the suit, it will be just and proper to appoint Court Commissioner for carrying out joint measurement of the suit property and it's adjacent Grampanchayat property No.384/A/5. Considering prayers of plaintiffs and defendant No.1, it will be just and proper to appoint Engineers namely Shri. Akshay Ajit Patil and Sharad Aannappa Digraje as Court Commissioners for carrying out joint measurement of the suit property and Grampanchayat property No.384/A/5 and for making enquiry about the fact of ascertaining actual and physical position of construction in the suit property, in order to meet the end of justice and for proper adjudication of the matter. At this preliminary stage, considering peculiar facts and circumstances of the case in hand as well as in absence of any Government document showing exact measurement of Eastern road, there is no need to carry out measurement of Eastern road. Resultantly, I pass following order :-

**:: ORDER ::**

- 1) Application (Exh.33) is partly allowed.
- 2) Engineers namely Shri. Akshay Ajit Patil and Sharad Aannappa Digraje are hereby appointed as Court Commissioners for carrying out joint measurement of the suit property i.e. Grampanchayat property No.384/A/4 admeasuring 92.92 sq.mtr. and it's adjacent Grampanchayat property No.384/A/5, situated at village Aalas, Tal. Shirol, Dist. Kolhapur and to show encroachment, if any.
- 3) Shri. Akshay Ajit Patil and Sharad Aannappa Digraje shall fix boundaries of Grampanchayat property Nos.384/A/4 and 384/A/5.

- 4) Plaintiffs and defendant No.1 shall deposit necessary fees of the Court Commissioners as well as all necessary charges thereof as per rule.
- 5) Plaintiffs and defendant No.1 shall make relevant documents available to the Court Commissioners in respect of Grampanchayat property Nos.384/A/4 and 384/A/5.
- 6) Plaintiffs and defendants are directed to remain present along with their learned advocates on the day fixed by the Court Commissioners for local inspection and joint measurement of Grampanchayat property Nos.384/A/4 and 384/A/5.
- 7) The Court Commissioners are directed to submit the measurement map and report after completion of the inspection work till 09.02.2026.
- 8) Issue Commission Writ accordingly.

(Dictated and pronounced in the open Court.)

Kurundwad.  
Date : 29.01.2026.

( Balasaheb S. Gaikwad)  
I/c. Jt. Civil Judge Junior Division,  
Kurundwad.