

<u>MHKO190004282019</u> 	<u>ORDER BELOW EXH.44</u> <u>IN</u> <u>R.C.S. No. 78/2019</u> (Bhimrao Vasant Mane etc. 3 Vs Dhondiram Maruti Patil etc. 3) <u>DATE : 27/03/2025</u>
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The defendants have filed this application under Order XXVI Rule 9 and section 151 of Code of Civil Procedure (in-short CPC) for appointment of court commissioner.

2. The plaintiff has instituted the suit praying for mandatory injunction and permanent injunction in respect of property bearing City Survey (in-short CS) No.347 situated at Titave, Tal Radhanagari, Dist Kolhapur. The defendants have filed counter claim and contended that the subject matter of the suit for which the plaintiffs are seeking relief does not fall in the property bearing CS No. 347, but falls under CS No.346, which is owned by defendant No.2.

3. Defendants vide this application submitted that it is necessary to appoint court commissioner for conducting joint measurement of properties bearing CS No.346 and 347 in order to ascertain that the subject matter is part of which property. Accordingly, he prayed for allowing the application.

4. The plaintiffs vide their say (Exh.45) submitted that they inherit the property bearing CS No.347 from their common ancestor Vasant Sakharam Mane. Property bearing CS No.346 is to the southern side of the CS No.347. The defendants have wrongfully made window and door to the northern wall situated in CS No.346 and thereby tried to encroach upon the area falling in CS No.347. Therefore, they also prayed for joint measurement of properties bearing CS No.346 and 347.

5. Perused the record. Heard Ld. Advocate of both sides. Considered the submissions.

6. At the outset, it is clear that both parties are claiming that the subject matter of the suit falls in their respective properties. At present, both parties prayed for joint measurement of both the properties i.e CS No.346 and 347. However, perusal of record shows that the application at Exh.5 seeking temporary injunction is still pending. Considering the stage of the proceeding that the evidence is yet not started, the application is pre-matured. In given scenario, appointing the court commissioner for local investigation would definitely amount to collection of evidence. The parties have not yet adduced evidence to support their respective claim. Further, the parties are at liberty to file application to appoint court commissioner at appropriate time, if they desire so.

7. In the light of above discussion, the application is rejected.

sd/-

Radhanagari

(N. P. Kakade)

Date : 27/03/2025.

Jt Civil Judge Junior Division,

Radhanagari.