

**ORDER BELOW EXH.21 IN R.C.S.No.11/2018.**  
**(CNR NO.MHKO20-000026-2018.)**

Plaintiffs have filed the present application under Order 26 Rule 9 of the Code of Civil Procedure for appointment of Court Commissioner. According to plaintiffs they have filed the suit for perpetual and mandatory injunction in respect of Gat No.248/2 which is situated at village Majnal, Tal. Panhala, Dist. Kolhapur. It is a case of plaintiffs that, on the Western side of the suit land there is a land of defendant and they are trying to encroach in suit land to the extent of 3 feet. Hence, in order to find out the alleged encroachment and to bring the factual position before the Court, they prayed for appointment of Court Commissioner.

02. Defendants have strongly opposed the application by filing their say. According to them, on 15.12.2017 land Gat No.247 is measured by the concerned Officer. There is no any necessity to appoint the Court Commissioner at this stage. Hence, prayed for rejection.

03. Heard both sides. Perused the application, say and pleading of the parties. Record disclosed that, application for temporary injunction under Order 39 Rule 1 of the Code of Civil Procedure is pending. Before deciding the temporary injunction application plaintiffs have moved the present application.

04. The learned Advocate for plaintiffs Shri. Mane argued that, after filing the suit defendants are appeared before the Court and filed their written statement. Defendants are come with a case that the Gat No.247 which is adjacent to the Western side of the suit land is measured on 15.12.2017. Plaintiffs have disputed about the alleged measurement of Gat No.247. Therefore, in order to bring the factual position before the Court, they prayed for another measurement through the Dy. Superintendent of Land Record, Panhala.

05. He relied on the judgment of Hon'ble Andhra Pradesh High Court in *Anil Kamalakar Shriodkar Vs Dudhappa Santu Patil, 2002 (1) Civil. L. J. 325* in which Hon'ble Karnataka High Court has observed that, in a suit for injunction whether encroachment of property was in dispute appointment of Court Commissioner for measurement of property and to demarcate the boundaries of the Properties was fully justified.

06. No doubt, in order to find out encroachment of property, appointment of Court commissioner for measurement of property is necessary. However, in present case record disclosed that, measurement of Gat No.247 is completed in the month of December, 2017. If it is a case of plaintiff that the suit measurement is not proper and correct one then he is having the right to approach before the proper forum by filing their objections. At this stage, there was no documentary evidence before the Court to show that, plaintiffs have challenged the said measurement before the proper forum by filing their protest

petition. It is well settled position of law that, application for temporary injunction is to be decided on the basis of affidavit and documentary evidence. If it is a case of plaintiff that, the alleged measurement is not proper one then he has to wait till the decision of Exh.5 and they have having the liberty after deciding the Exh.5. In short, at this there is no any need to issue Commission as prayed by plaintiff. With this following order is passed.

**ORDER**

Application is rejected.

Sd/-

( M. S. Todkar )

Date: 02.04.2018.

Civil Judge Junior Division,  
**Kale(Kheriwade).**

I Affirm that, the contents of this P.D.F. file Order are same, word to word, as per the original Order.

Name of the Stenographer	K. B. Chavan
Name of Court	Civil Judge, Junior Division & Judicial Magistrate, First Class, Kale (Kheriwade).
Date of Dictation	02/04/2018.
Order signed by the P.O. on	06/04/2018.
Order uploaded on	07/04/2018.