

**ORDER BELOW EXH. 69**

01. Present application is filed under Order 26 Rule 9 of the C.P.C. to appoint the Court Commissioner.

02. In short, it is the contention of the plaintiff that he has purchased the land in Survey No. 35/A along with half share in the suit well. The defendant has denied the description of the suit well and right of the plaintiff in the well. The pipeline is made by the plaintiff. Therefore, so as to brought on record the description of the well, it is necessary to call the report on the point mentioned in para No. 3 & 4 of the application. It will not amount to collection of evidence. Oral evidence cannot be given on the factual aspects. Hence, prayed to allow the application.

03. The application is opposed on the ground that to collect the evidence application is filed. The plaintiff wants to collect the evidence of possession and washout the admissions given by the witness. Panchnama is there. Hence, prayed to reject the application.

04. Heard the parties. Upon hearing both the parties and perusing their respective contentions, the existence of the well is not disputed. The only dispute is whether plaintiff is having right to enjoy the water of the suit well or not. In the application, the plaintiff wants to brought on record, how the plaintiff use the water, length of pipeline made by him ? If this fact is taken into consideration, then, it appears that, he wants to collect the

evidence regarding the pipeline, who use the water ? Whether there is any electric motor ? All these things are the collection of evidence which cannot be permitted by appointing commission.

05. Further, the panchnama of the revenue office is on record. In these situation, I do not found any substance in the application and the application deserves to be rejected. Hence, I pass following order.

**ORDER**

Application is rejected.

Sd/-

(R.P. Kulkarni)

Civil Judge Senior Division,  
Nilanga.

Date : 05.02.2019.