

ORDER BELOW EXH. 113 IN RCS NO. 361/2011

01. Perused the application, affidavit filed by the defendants no. 3/1 to 7. Read say filed by the plaintiff vide exh. 116. Perused the entire documents on the record.

02. Considering rival contentions of both sides, submission of both sides. Following points arise for my consideration. I have recorded my findings thereon with reasons as under :

	POINTS	FINDINGS
1.	Whether present application is tenable, just and proper ?	No.
2.	What order ?	Application is rejected.

: REASONS :**AS TO POINT NO. 1 :**

03. The defendants have filed the present application under order XXVI Rule 9 of C.P.C. for appointment of court commissioner to make local investigations. It is the case of the defendants that suit way is in existence since long back. The defendants have pleaded the same thing in their written statement. In order to elucidating the matter in question amongst both the parties appointment of court commissioner is necessary.

04. On the contrary, it is the case of the plaintiff that no such way is in existence as per the case of defendants. The plaintiff have further submitted that the then Tahsildar, Shirur Anantpal wrongly created new cart-road which is beyond his jurisdiction. The order of Tahsildar is set aside up to the Divisional Commissioner. The plaintiff have further submitted that same application was filed by the defendants vide exh. 46. It was allowed. However, the defendants did not comply the order of the court. Therefore the court have rejected the application, exh. 46. Later similar application filed by the defendants. According to the plaintiff application is not tenable. It is just to kill the time. Therefore, the plaintiff have prayed for rejection of the application.

05. Considering submission of both sides, rival contentions of the both sides, perusal of record, it depict that the defendants had filed similar application for same cause vide exh. 46. It was allowed on 04/07/2012. Till 24/07/2012 the defendants failed to comply the order of the court pertaining to deposit of amount of court commissioner. Under the circumstances, by the order of the court dated 24/07/2012, said application was rejected and disposed off.

06. It reveals from the record that the defendants have filed the present application for the similar nature, purpose after the span of three years. Had it been the fact that the defendants really wanted to appoint the court commissioner to make local investigation in order to point out the fact pertaining to existence of disputed way, they

would have been deposited the amount of charges of court commissioner. However, the defendants failed to deposit the amount of charges of court commissioner. Hence, it seems that the defendants are not too interested in appointment of court commissioner. The defendants have not shown due diligence to comply the order of the court dated 04/07/2012. Therefore, the court finds that present application is not tenable, being devoid of merit deserves to be rejected. Thus the court pass the following order.

O R D E R

Application is rejected.

Date : 22/07/2015.

Sd/-
(G. H. Patil)
Jt. Civil Judge Senior Divn.,
Nilanga.