

**MHLA110009662018**

**Order below Exh.78 in RCS No.492/2016**  
**Madhav and Anr. Vs. Balikabai and Ors.**

Perused contents of the application and say thereon. Heard to both sides. Perused the record. Learned advocates for the parties submitted contents of the application and say thereon.

2. The application discloses that, Court Commissioner was appointed and the suit property also got measured. However, the Court Commissioner is retired from service. He does not come for his evidence. Therefore, the plaintiff lastly prayed to again appoint Deputy Superintendent Land Record as a Court Commissioner. The defendants contended that, measurement map and report of the Court Commissioner have already been received. The plaintiff can get proved the measurement map and Court Commissioner's report by taking other reports. Therefore, there is no need to again appoint the Court Commissioner. The defendants lastly prayed to reject the application.

3. Application vide Exh.78 is supported with affidavit vide Exh.79 whereby the plaintiff affirms that, the Court Commissioner is not ready to come before the Court for his examination. More so, the record and proceedings reveal that, the suit is part-heard. Recording cross-examination of plaintiff No.1 Madhav (P.W.1) has already been over.

4. More so, record makes clear that, the plaintiff had applied vide Exh.28 for getting appointed the Court Commissioner for getting measured the suit property. Accordingly, the Court Commissioner was appointed as per order dated 28.02.2018 passed below Exh.28. Thereafter, the witness summons was issued to the Court Commissioner. However, his presence cannot be secured. Bailiff report vide Exh.72 reveals that, he is retired. On the count, the plaintiff himself is approaching to the Court and seeking to again appoint the Court Commissioner. Considering contents of the application and say thereon it indicates that, it became impossible for getting proved the earlier measurement map and Court Commissioner's report as per order dated 28.02.2018 passed below Exh.28. When the plaintiff himself approaching to the Court and seeking to again appoint the Court Commissioner as aforesaid, no prejudice would be caused to the defendants. In such circumstances, it is just and proper to again appoint the Court Commissioner. Hence, in the interest of justice, application vide Exh.78 will have to be allowed. As a result, I pass following order.

**ORDER**

- 1 Application vide Exh.78 is allowed.
- 2 Deputy Superintendent Land Record, Nilanga Dist. Latur is hereby again appointed as Court Commissioner for carrying out the joint measurement as per order passed below application vide Exh.28

dated 28.02.2018. He is also directed to again carry out the measurement as per order passed below application vide Exh.28 dated 28.02.2018 and file its report as earliest.

- 3 The plaintiffs are directed to deposit requisite/ legal charges within one month after issue of necessary writ to Deputy Superintendent Land Record, Nilanga, Dist. Latur.
- 4 The plaintiffs shall submit the photo-copy of challan at the earliest.
- 5 No order as to costs.

Order dictated and pronounced in open Court.

Date :20/02/2026  
Place: Nilanga

( R. V. Pande)  
Civil Judge, Senior Division, Nilanga,  
District Latur.