

MHND140006252024



R.C.S. No.281/2024
Ahemad & Ors Vs. Shaikh
Mahemood & Ors.

ORDER BELOW EXH.42

01] The present application is filed for appointment of Court Commissioner under Order 26 Rule 9 of the Code of Civil procedure 1908 in respect of the property bearing land in gut no.149 admeasuring 1H 62 R to the extent of plaintiff no.1 of 0.22 R and plaintiff no.2 admeasuring to the extent of 0.21 R land and plaintiff no.3 admeasuring 1.01R to the extent of 0.32 R land situated within the town Degloor, Tq. Degloor Dist. Nanded. Specifically describe the in the claim clause of plaint. (Hereinafter referred as *suit lands*).

02] It is submitted by plaintiffs that they have filed suit RCS No.17/2020 in which their application for appointing T.I.L.R. as Court Commissioner to measure the disputed property and fixing boundaries was allowed. And accordingly the suit lands were measured by Court Commissioner on 02/02/2023. They further submitted that in that T.I.L.R. report it was disclosed that defendants were in possession of the suit lands, however, T.I.L.R. has not mentioned that defendants were in possession of how much area specifically. Defendants are under preparation to sale out the suit lands in their possession illegally. By way of this application plaintiffs sought to measure the suit lands a fresh. Hence, this application.

03] The defendant no.1, 3, 4, 7 and 8 failed to file their say. Therefore, the application decided without their say. The defendant no.2, 5 and 6 filed their say overleaf and submitted that the plaintiffs in collusion with Court Commissioner wants to grab the suit lands. Further they submitted that, the plaintiffs are collecting evidence with the help of Court Commissioner. Hence, they prayed to reject the application.

04] Perused the application and say. Heard learned advocate of plaintiffs and defendant no.2, 5 and 6. The suit is instituted for recovery of possession of suit lands and perpetual injunction against the defendants. During the pendency of the suit, the plaintiffs have moved this application to get measure the suit lands through 'Taluka Inspector Land Revenue' by appointing him as court commissioner. The claim of the plaintiffs is that in earlier Civil Suit RCS No.17/2020 they have measured suit lands and accordingly T.I.L.R., Degloor has filed their report. However, according to the plaintiffs the said T.I.L.R. report is vague and ambiguous because it does not state that how much area is in illegal possession of defendants. Therefore, by way of this application the plaintiffs sought to remeasure the suit lands.

05] In the present case plaintiffs have yet to be entered in to the witness box and evidence is awaiting. Issues are yet to be framed. The plaintiffs have yet to lead their evidence. In such circumstances, here, I would like to refer the authority of Honourable Bombay High Court, **Shantaram Dattatray Kekan Versus Bhausaheb Karbhari Kekan, [2022 SCC Online Bom 6466]** which is relevant for the case in hand. In this

case the issue before the Honourable Bombay High Court was that at which stage the court commissioner for the measurement of land should be issued. While dealing with the case, the Honourable Bombay High Court has considered a Catena of pronouncements and observed that, *“there is no hard and fast rule about it, however, decision should be rendered in consonance with the facts and circumstances of each case. Further, the Honourable High Court by considering the facts before it has finally concluded that the appointment of court commissioner for the measurement of land and fixation of boundaries at least at the stage before plaintiffs adduced their evidence is not warranted.*

06] In the case in hand, also, the evidence of the plaintiffs is yet to begin. In such circumstances, if the commission is issued, it would amount nothing but the collection of evidence and which is not expected by the law. Further, the expert witnesses are meant for the assistance of the court and not for the assistance of either parties which carries more importance and sanctity of law.

07] Therefore, considering the settled law discussed supra vis-a-vis facts and circumstances of the instant case, I hold that the application is premature, and therefore, devoid of merits. Thus, the application deserves to be rejected. However, it is clear that in the present suit the parties are at liberty to file application under Order 26 Rule 09 Code of Civil Procedure for appointment of TILR at appropriate stage. Accordingly I pass the following order.

ORDER

1. Application at Exh.42 stands rejected.
2. No order as to cost.

Degloor.

Date :- 30/08/2025

(Raghavendra N. Dev)

Civil Judge, Jr. Division,
Degloor Dist. Nanded.

CERTIFICATE

I affirm that the contents of this P.D.F. File Judgment/Order are same, word to word, as per the original Judgment/Order.

Name of the Stenographer	A.K. Mohammad
Name of Court	Shri. Raghavendra N.Dev, C.J.J.D. and J.M.F.C., Degloor
Date of Dictation	30/08/2025
Judgment signed by the P.O. on	12/09/2025
Judgment/Order uploaded on	12/09/2025