

R.C.S.No.15/2006  
Narayan Vs. Nanarao

**ORDER BELOW EXH. 101**

1. This is an application filed by plaintiffs under Order XXVI Rule 2 of Code of Civil Procedure for appointment of commissioner to examine witness.

2. It is the contentions of the plaintiffs witness Mr. M. A. Rauf is the translator of adoption deed which was written in Urdu language. Therefore, he is necessary to be examined in this case. It is further contended that the witness is unable to attend the court due to sickness. He has recently undergone a TURP surgery. The application is supported by medical documents.

3. Defendants have raised objection on the ground that medical papers nowhere shows that the witness is unable to attend the court.

4. Heard Shri. U. G. Tikore learned advocate for the plaintiffs and Shri. B. S. Shahane learned advocate for the defendants. Following points arise for my determination and my findings are recorded thereon for the reasons mentioned below.

**POINTS**

**FINDINGS**

	<b><u>POINTS</u></b>	<b><u>FINDINGS</u></b>
1	Whether the appointment of commissioner to examine the witness is necessary in the	Yes

	interest of justice ?	
2	If yes, who amongst plaintiff and defendants shall borne the expenses for commission ?	Plaintiff
	What order ?	Application is allowed.

### REASONS

5. **AS TO POINT NO. 1:** At the outset, it is to be noted that a party can not be prevented from adducing the best evidence, if such evidence can be adduced with help of the commissioner. Refusal of request of the party to appoint a commissioner in an appropriate case amount to failure of exercise of jurisdiction vested in court. Whether the instant case is appropriate to appoint commission to examine witness. Perusal of record reveals that the witness who is proposed to be examined through commissioner is translator. Medical certificate denotes that the witness is undergoing treatment and advised bed rest for two months. Therefore, it is obvious that the witness is unable to attend the court due to sickness. It is necessary in order to expedite the matter to examine him. It will take uncertain time for recovery of witness from the sickness. Till then the matter can not be kept stand still. Therefore, in my view it is necessary to appoint the commission to examine the witness i.e Mr. M. A. Rauf.

6. **AS TO POINT NO.2:** The plaintiffs have to prove his case by adducing the evidence at his costs. In such circumstances, it is not desirable to over burden the defendants with the expenses of this commission. Therefore, expenses incurred for the commission to the defendants have to be borne by the plaintiffs. Hence, I answered the point no.2 accordingly.

7. **AS TO POINT NO.3 :** In view of my findings to point no.1 and 2 the application Ex. 101 deserve to be allowed. Mr. D. R. Pawar, learned advocate from Hadgaon Taluka Bar Association is suggested by both the parties for being appointed as a court commissioner for examination of witness. Hence, I proceed to pass the following order.

### **ORDER**

1. Mr. D. R. Pawar, Advocate is hereby appointed as court commissioner to examine the witness Mr. R. A. Rauf, resident of Degloor Naka, Nanded Tq. & Dist. Nanded on 06.04.2015 at his residence. However commissioner is at liberty to pre-pone the date of commission subject to notice to advocates of both the parties.
2. The plaintiffs are directed to deposit the amount of Rs. 1000/- provisionally to meet the fees of

commissioner. They are further directed to deposit Rs. 300/- provisionally towards expenses of the defendants on or before 20.03.2015 and also to pay the Bhatta of the clerk of Rs. 200/-.

3. Both the parties are directed to remain present on 06.04.2015 before the commission.
4. The Court Commissioner is directed to submit evidence taken under it to this court on or before 08/04/2015.
5. The Junior Clerk of this court is directed to assist the commission in recording evidence and he is permitted to carry the record and proceeding of this case under his safe custody to the place of commission.
6. Costs on applicant.
7. Issue commission letter accordingly.

Sd/-

(V.N.Thakur)

Civil Judge J.D., Hadgaon.

Date : 17-03-2015

CERTIFICATE

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

Name of the Stenographer : Nagappa Gurapadappa Majage

Court Name : J.M.F.C., Court, Hadgaon.

Date : 17/03/2015

Judgment signed by the Presiding Officer on : 17/03/2015.

Judgment uploaded on : 17/03/2015