

<u>MHNS130012422023</u> 	R.C.S. 171/2023
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ORDER BELOW EXH. 27

Pundalik Medhane Vs. Jayprakash Chordiya+1

The present application has been filed by plaintiff for appointment of Court Commissioner to inspect the suit property situated at Pimpalgaon(B) in Survey no.676 ad-measuring area 2 H 69.06 R and size 3.21 paise. Perused the application and say filed by the defendants. Heard both.

2. It is the contention of the plaintiff that the present suit is for declaration and perpetual injunction in respect of the suit property. It is further contended that suit property in Survey no.676 is ancestral suit property of plaintiff. But defendants intentionally encroached in the plaintiff's area from the west to north and from east to the south by about 3 to 4 feet, dug pits and also made one feet deep drain and started the work of wall compound. Suit property survey no. 676 was measured by the T.I.L.R. but the measurement report and map in this regard are

in the possession of the defendant. So, it is necessary to measure the boundaries of said suit property by appointing court commissioner. Therefore, he prayed that the application may kindly be granted.

3. Learned advocate for the defendants have not resisted the application.

4. Considered submissions. It is a settled principle of law that the Court cannot appoint a commissioner to collect evidence for a party who has not yet discharged their initial burden of proof. The suit is at the stage of framing of issues. The plaintiff must first establish his own title and the exact dimensions of his property through oral and documentary evidence before alleging encroachment that requires technical measurement.

5. In a suit for declaration and injunction, the plaintiff must prove his possession and the boundary of the property. A commissioner cannot be used to determine who is in possession or to create a case for the plaintiff where evidence is lacking.

6. Therefore, I found no immediate necessity for a local investigation at this stage of the proceedings. The plaintiff is at

liberty to prove the alleged encroachment by examining himself first and through other evidentiary means during the trial.

7. Needless to mention here that both parties have to prove their case on their own feet. Therefore, as far as the provision under Order XVI Rule 9 of Code of Civil Procedure is concerned the court appoint and allowed Court Commission when the local investigation of the suit property is required for the purpose of elucidating any matter in dispute. Plaintiff has opportunity to prove the alleged illegal construction after framing issues. Therefore, as if the application for the Court Commission in respect of the suit property is granted then it will amount to collection of evidence which will cause prejudice to rights of other side. Therefore, it seems that the application is devoid of any merits. In the result, I pass the following order.

ORDER

1. Application Exh.27 is rejected.
2. Costs in main cause.

Date : 27/01/2026

(P. D.Kolekar)
Jt.Civil Judge Junior Division,
Pimpalgaon(B.).