

**Order below Exh. - 17 in R.C.S. No. - 83 of 2015**

Vasant Sakharam Pawar --- plaintiff.

v/s.

Raghunath Sakharam Pawar --- defendant.

1] The plaintiff has filed this application under order 26 Rule 9 of the Code of Civil Procedure for appointment of commissioner to carry out the local inspection of the suit property through the TILR office and for recording the finding in respect of the same. The plaintiff has filed the original suit for the measurement of the said land from TILR and to find out the exact area of the plaintiff as per 7/12 extract and if encroachment found in that measurement than to remove the said encroachment if found.

2] The defendants filed his say below Exh. - 23 and submitted that, already measurement took place bearing No. - 2887/2014 and the said surveyor also shows the boundaries on 09/03/2015. Accordingly, the panchanama was prepared therefore the suit itself is not maintainable. He further submitted that plaintiff failed to show any encroachment of the defendant on his land and this type of suit is not maintainable. Hence, prayed for rejection of the application.

3] Considering the pleadings of the suit and documents produced in support of it, following points arise for my determination to which I record my findings thereon for reasons to follow :

	<b><u>POINTS</u></b>		<b><u>FINDINGS</u></b>
1	Whether the appointment of commissioner for joint measurement of the suit properties is just and	..	

	proper in the facts and circumstances of the case ?		... In the negative.
2	What order ?	..	As per final order.

**REASONS**

4] Heard learned counsel for plaintiff Shri. P.D. Pawar and learned counsel for defendant Shri. S.K. Kulkarni.

5] **Order 26 Rule 9 of the Code of Civil Procedure** contemplates appointment of court commissioner for the purpose of elucidating the matter in dispute. The plaintiff has submitted that he has filed the suit for the appointment of TILR for the measurement of the land of plaintiff and defendant as per 7/12 extract and to find out the encroachment if committed by anybody and thereafter for removal of that encroachment. He further submitted that he has already carried out the measurement bearing No. - 2887/2014 and he has also filed the measurement map to the suit, however it is necessary to measured the sub-divisions of the said land and to show the encroachment in that map. Therefore, he prayed that court commissioner may be appointed.

6] It appears that plaintiff himself is not sure whether his land was encroached by anybody or not. He also failed to file the encroachment map as per order 7 Rule 3 of the Code of Civil Procedure and particularly as per the amendment of Hon'ble High Court. He is not confirmed whether defendant has encroached on his land or not. So he is trying to collect the evidence through this Court Commissioner.

7] It is admitted facts that plaintiff has every right to get measured his land from the concern authority as per Maharashtra Land

Revenue Court. There is separate Chapter in that regard. Plaintiff did not challenge the previous measurement. His main relief in the plaint cannot be entertained at the interim stage. Considering the long lapse of time after he became the owner of the said property, he is not entitled to get the helping hand of the Court. Without approaching to the proper authority plaintiff wants to taken the help of court for collecting evidence, which is not permissible in eye of law. Therefore, I am of the opinion that the application deserves to be rejected. Therefore, I proceed to pass following order -

**ORDER**

- 1] Application Exh. - 17 stands rejected.
- 2] Costs in cause.

Chandwad.  
Date : 21/02/2018

**(K.G. Chaudhari)**  
Civil Judge, J.D., Chandwad,  
Dist-Nashik.