

MHNS160007692016



**ORDER BELOW EXH.64**  
**(Passed on 11/06/2025)**

1. The plaintiff has filed this suit for removal of encroachment and for perpetual injunction. This is an application filed by plaintiff for measurement of suit cite and demarcation of encroachment area on the suit site by appointing the court commissioner I.e (TILR).
2. Read application and say of defendant. Heard learned counsel for the plaintiff and defendant. Perused the documents and record.
3. Following Points are arose for my determination I have recorded my findings and reasons thereon are as under :-

<b>Sr.No.</b>	<b><u>POINTS</u></b>	<b><u>FINDINGS</u></b>
1.	Whether the Plaintiff has made out grounds to appointment of Court commissioner for demarcation of encroachment on suit cite ?	...No...
2.	What order ?	...The application is rejected.

**REASONS**

**POINT NO.1 :-**

4. Having considered the grounds set out in the application and say, it would be proper to have brief resume of the facts pleaded

by way of pleadings by both the parties.

5. It is the contention of the the plaintiff that, the field property Gat No. 1844/1 area 0.51 R along with barren land area 0.06 R I.e total area 0.57 R situated at Moje Vadnerbhairav Taq. Chandwad Dist. Nashik is received to the plaintiff in partition from his father defendant No. 1. It is the contention of plaintiff that out of the suit property Eastern side 10 R land was given to defendant No. 1 by partition deed dated 02.01.2007. It is the contention of the plaintiff that after defendant No. 1 he is owner of said 10 R area. It is the contention of the plaintiff that, defendant No. 2 is the brother of his father I.e defendant No. 1 and he tried to construct house on the said 10 R area and therefore, plaintiff has filed present suit for declaration and injunction.

6. It is the contention of plaintiff that the defendant No. 2 tried to construct his house illegally by encroaching 10 R area of plaintiff. It is the contention of plaintiff that in order to brought exact position of suit site the plaintiff prayed to appoint the TILR as court commissioner for measurement of Gat No. 1844/1 to 1844/6 and for demarcation of encroached area in the map for filing report in respect of the suit property for the proper adjudication of matter and therefore prayed to allow the application.

7. The defendant have filed their reply. In their reply they opposed the application. It is submitted that if application is intended to allowed then area of defendant alongwith road, house, well and trees are required to show in the map of TILR.

8. Heard Ld. Counsel for the both the sides and perused the record. That takes me to material question for adjudication whether

in this state of facts a spot inspection or Court Commissioner can be appointed. A Court Commissioner can be appointed only when the Court is satisfied on the basis of material available on record when a party is not able to produce the desired evidence to assist the Court to record finding on an issue for adjudication. In other words, a Court Commissioner cannot be appointed to collect the evidence. It is quite settled legal position that Court Commissioner cannot be appointed to collect the evidence. It is for a party who asserted a claim to satisfy the Court.

9. In the case in hand, it is the case of plaintiff that there was partition with defendant No. 1 and 10 R area was given to him. It is the contention that in this said 10 R area defendant No. 2 tried to encroach and tried to construct his house. It is the case of plaintiff that defendant has encroached over his property and also come with pleading that said area was given in partition to defendant No. 1. If this is the case of plaintiff that said area was given to defendant No. 1 in partition then the alleged encroachment by defendant No. 1 on said area is not arose at all. More over plaintiff has not filed any map along with record as required under order VII Rule 3 of CPC.

10. The plaintiff and defendant has earlier filed application at Exh. 8 and 18 for the same purpose which was rejected by this Court. The Civil writ petition No. 13023/2018 was filed to challenge said order however, Hon'ble High Court has dispose off the said civil writ petition with obervation that the parties are at liberty to file the said application after entering into witness box. No doubt, the plaintiff after the said order of Hon'ble High Court has filed evidence affidavit Exh. 63 but failed to lead his further evidence and filed the

present application at Exh. 64. The act of plaintiff shows that he has no intention to lead evidence and prove his case but his intention are to collect evidence by appointing the Court Commissioner.

11. In my view the plaintiff has other alternative way to brought on record the said facts and to my mind power of appointment of Court Commissioner for measurement and demarcation of encroach area of suit site cannot be exercised by the Court to assist party to collect evidence where it can get by evidence itself. In such circumstances, assistance of Commissioner is neither necessary nor justified. Therefore, this factual position is quite sufficient to demonstrate that the application is completely devoid of merits. The Court Commissioner cannot be appointed to examine the state of dispute site and court commissioner can not be appointed for the collection of evidence. Consequently, I am not inclined appoint a Court Commissioner for the purpose mentioned in the application. In turn, I answer point No.1 in the negative and pass the following order :-

**ORDER**

- 1] The application [Exh.64] Under order XXVI R 9 of the Code of Civil Procedure, 1908 is rejected.
- 2] Cost to follow main cause.

Date : 11/06/2025

**(S. S. CHHALLANI)**  
**Civil Judge (Jr. Dn.),**  
**Chandwad.**