

ORDER BELOW EXH.59

Plaintiff filed present application for appointment of court commissioner vide Order XXVI Rule 9 CPC. Defendant filed say vide Exh.62.

2] Heard both the sides.

3] Plaintiff contended that during the pendency of application Exh.5, defendant no.4 by demolishing wall, constructed new tin shed and opened shop of glass by name "Shamai" by encroachment, without obtaining permission from government authorities. Hence, prayed to appoint court commissioner.

4] Defendant contended that shop of defendant no.4 was already in existence since 1996. There is no encroachment. Hence, prayed to reject the application.

5] Perused record.

6] Plaintiff vehemently argued that defendant stated the contents in W.S., which are false. However, upon full fledged trial, the situation or contents mentioned in the W.S. will come on record and for that appointment of court commissioner is not necessary. The suit is for partition, declaration and injunction. The suit is not for removal of encroachment. Purpose of Order 26 Rule 9 is **not to assist a party to get the evidence which the party itself is supposed to collect**. Hence, the plaintiff is not entitled to gather the evidence from the order of the court. Moreover, the application Exh.5 is pending. To know the position on the suit property, it will require hearing. As the suit is for partition, appointment of court commissioner is not necessary. Accordingly, I pass following order.

Order

Application is rejected.

sd/-

Dtd.09/12/2024

(Shri M.S. Bharad)
2nd Joint Civil Judge, J.D., Saswad,
Pune.

CERTIFICATE

“ I affirm that the contents of this PDF file order are same word for word as per the original order.”

Name of the Court	: Kavita S. Navandar 28 th Jt.C.J.S.D.,Pune
Name of Stenographer	: P.S. More, Stenographer Grade-III
Date of Order	: 23/03/2021
Order signed by PO on	: 23/03/2021
Order uploaded on	: 25/03/2021