



ORDER BELOW EXH. No. 57 IN R.C.S. No. 410/2018

[Vitthal Ganpat Bhosekar and ors. Vs. Baban Genba Bhosekar and
ors.]

(Passed on 02.05.2026)

This application is moved by defendant no. 1 to 4 under Order XXVI Rule 9 of Civil Procedure Code for appointment of Court commissioner.

02. As per defendants, in this suit for partition, plaintiff has carried out amendment many times and have not described the suit property properly. Further the partition of ancestral joint family property is already executed in 1992 by family arrangement and both plaintiff and defendants are in separate possession and enjoyment of their respective shares. Despite of this plaintiff has filed this false suit for partition and have even secured interim relief in form of injunction. Therefore in order to bring the ground reality of the suit property on record in respect of the possession of parties to the suit and to elucidate the matter in dispute, court commissioner be appointed. Hence this application.

03. Plaintiffs have filed say at Exh. 59 and strongly resisted this application on the ground that court commissioner cannot be appointed for determination of possession. The burden is upon the parties who plead the particular fact about possession or previous partition to prove the same. Therefore, the help of court machinery in the form of court commissioner cannot be taken for collection of evidence. Hence application be rejected.

04. Heard Ld. Advocate for plaintiff and defendants at length.

05. Perused the record in detail. This suit is for partition, injunction and declaration. Yet the trial is not begun. The issues are

framed at Exh. 46 which are as per the facts in dispute. The burden to prove this is upon the parties to the suit. it is well settled position of law that court commissioner cannot be appointed for collection of evidence. The burden to prove the partition of 1992 as per specific defence of defendants will be upon them. Similarly the burden to prove the jointness of suit properties in order to claim the partition will be upon plaintiffs. Both parties must discharge their burden in order to get the reliefs sought for. Court commissioner cannot be appointed to determine the possession on ground as the burden to prove the possession is upon the parties. Yet the evidence of plaintiff is not begun. After that defendants will also be entitled to lead their evidence in order to prove the specific facts of partition in 1992 as per their pleading. Thus I do not find any necessity to appoint the court commissioner for the reason mentioned in this application. In fact the court commissioner cannot be appointed to help the parties to collect their evidence and prove the facts whose burden lies upon them. Therefore, in view of above discussion, the application deserves to be rejected. Hence, passing following order :-

ORDER

Application is rejected.

Daund.
Date :- 02.05.2026.

[Smt. S. A. Virani]
Jt. C.J.J.D., Daund, Dist. Pune.

CERTIFICATE

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

Name of Steno	:-	S. A. Kanaki
Name of the Court	:-	Smt. S. A. Virani, Jt. C.J.J.D., Daund, Dist. Pune.
Order date	:-	02.05.2026.
Order signed by the Presiding Officer on	:-	02.05.2026.
Order uploaded on	:-	02.05.2026.