



M.C.A No. 1 /2026
CNR MHPU21-000009-2026

Kaluram Jijaba Daundkar & ors.
V/s.

Shantaram Kanhu Daundkar &
ors.

ORDER PASSED ON APPLICATION FOR APPOINTMENT OF COURT COMMISSIONER

This is an application for appointment of court commissioner filed by the appellants under Order 26 of CPC. According to appellants, there is a dispute between appellants and respondents in respect of use of road the suit property which is specifically mentioned in prayer of the application A and B.

2] Appellants contended that there was old road in land Block nos. 628, 633, 632, 635, 634, 641, 642, 664 which continued to land Block nos. 665 and 666. Instead of that the respondents while objecting the claim of appellants contended that there was a road from land Gat nos. 630, 631, 632, 664 and 634 at the rest Northern side of canal. Respondents by placing the above theory created ambiguity and confusion in respect of the approached road as sought by the appellants. In order to remove the said ambiguity and to bring the exact position on record, appointment of court commissioner in respect of the above issue is important. No prejudice would be caused to either party if court commissioner is appointed to bring the actual situation on record. In order to decide real controversy involved between the parties and to avoid multiplicity of proceedings, an appointment of court commissioner is important. Therefore, the appellants prayed for allow the application.

3] In counter, respondents by way of reply raised legal as well as factual objections. According to respondents, the said application is not maintainable in the present form. This application is made only for harassment of the respondents. Respondents contended that a Suit No. 72/2023 was filed by the respondents before Tahasildar and the same was decided on 20/02/2024. In the said matter, the Tahasildar has personally visited the disputed road and prepared panchnama. Respondents thereafter filed RTS Revision No. 151/2024 before SDM Khed and challenged the said order dated 20/02/2024. The said revision was partly allowed and the revision was remanded back for afresh inquiry. Pursuant to that Tahasildar has conducted inquiry visiting the spot and prepared detailed panchnama. Appellants have also filed similar application for appointment of court commissioner in RCS No. 367/2025 and the said application is pending before the court. Therefore, Appellate Court cannot entertain the issue which is already pending in original suit.

4] Since revenue authority has visited the spot twice confirming there is a road, therefore repeated exercise for the same issue is not warranted by law. This application is filed by the appellants for collecting evidence which is not permissible by law. Respondents therefore prayed for rejection of the application.

5] Having heard both the sides at the length of considerable time. I have carefully gone through record and proceeding coupling with various documents on record. At the outset, it is imperative to mention that the present application is filed

under Order 26 Rule 9 of CPC. Therefore, it would be relevant to consider the said provision.

6] Order 26 Rule 9 of CPC – Commissions to make local investigation- In any suit in which the court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market value of any property, or the amount of any mesne profits or damages or annual net profits, the court may issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon for the court.

7] Provided that, where the State Government has made rules as to the persons to whom such commission shall be issued, the court shall be bound by such rules.

8] In the light of law laid down as above, if the present application is tested on touchstone with the law cited supra, from the application and reply it appears that the appellants have already moved a single application for appointment of court commissioner before the learned trial court and the same is pending for adjudication. The opening lines of Rule 9 Order 26 of CPC reflect that in any suit in which the court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute.

9] Admittedly, in the present appeal final decree or judgment of the learned trial court on the disputed issue not

challenged before this court. Challenge in the appeal is an interim order of learned trial court. Since this is not a regular appeal against the final judgment and decree therefore, it cannot be said the present proceeding is continuous proceeding of the main suit. Moreover, the same application is pending before the learned trial court for appropriate adjudication. In view of the specific law laid down in cited supra provision, I am of the humble and considerable view that the present application would not be maintainable at this juncture before this court in Miscellaneous Appeal.

10] Be that as it may, appellants and respondents on their own placed ambiguous and confusing facts regarding having existence the approached road from the suit property mentioning the different land Gat numbers as per their convenience. Therefore, to remove the black clouds roaming around the disputed road issue an appropriate order required to be passed by the learned trial court after considering the pleas of both sides in accordance with law. Therefore, it would not proper to pass any comments on the merits of the present application. At the same time, learned trial court should have to take up an application for appointment of court commissioner of the appellants expediently and shall make endeavour to dispose of it expediently without spending further unnecessary time.

11] For the forgoing reasons and discussion, this application would be of not maintainable. Hence, following order-

ORDER

Application is rejected and disposed of accordingly.

Khed.
Date – 07th March, 2026

(A. S. Sayyad)
District Judge -1
Khed-Rajgurunagar, Dist- Pune

CERTIFICATE

I affirm that the contents of the PDF file Judgment are same word for word as per order.

Name of Steno	Mrs. Pranjali Prasad Bokil Stenographer Grade I
Name of Court	A. S. Sayyad District Judge – 1 Khed-Rajgurunagar, Pune.
Date of Order	07/03/2026
Order signed by PO on	07/03/2026
Order uploaded on	09/03/2026