

ORDER BELOW EXH.61

This is an application under Order XXVI Rule 9 of the Code of Civil Procedure to appoint a Court Commissioner.

2. It is the case of the plaintiffs, that the plaintiffs have filed the present suit for specific performance of the agreement to sale dated 15/12/1992 regarding the suit property at survey no.13 hissa no.2/B and Gut no.171/1, admeasuring 0-15-1 situated at mouje Dheku, Tal.Khalapur, Dist.Raigad, declaration and injunction. The defendants have denied the construction of the plaintiffs over the suit property through their written statement filed on 01/11/2014. The plaintiffs made amendment to the plaint and prayed for the relief of declaration that the construction of the defendants over the suit property is illegal. Therefore, to bring the encroachment of the defendants over the suit property before the Court it is necessary to appoint court commissioner. Therefore, the plaintiffs prayed to allow the application.

3. The defendants filed say overleaf and contended that the suit is for specific performance. The plaintiffs are not the owner of the suit property. Therefore, the court commissioner cannot be appointed. The plaintiffs are trying to create a witness with the help of the Court. The plaintiffs cannot create evidence with the help of the Court to

prove their case. Therefore, the defendants prayed to reject the application.

4. Heard learned advocate Shri.V.T.Mhatre for the plaintiffs and learned advocate Shri.V.M.Namjoshi for the defendants. The points for determination along with the finding and reasons thereon are as under:

	POINTS	FINDINGS
1.	Whether the appointment of Court Commissioner is necessary for the purpose of elucidating the matter in dispute?	Yes.
2.	What order?	Application is allowed.

REASONS

POINT NO.1 AND 2

5. Read the application and the plaint. The suit is for specific performance of contract, declaration and injunction. The plaintiffs have prayed declaration that the construction of the defendants over the suit property is illegal. In the matters of encroachment, the encroachment area must come before the Court. The very object of appointing a court commissioner is to help the Court to find the truth in the averments of the plaintiffs. If the application is allowed it will help in elucidating the matter in dispute. The D.S.L.R is an expert relating to measurement of lands. Hence, in the interest of justice, the

application deserves to be allowed. Hence, I answer Point no.1 in the “affirmative” and in answer to Point no.2, I pass the following order:

ORDER

1. The application is allowed.
2. The Deputy Superintendent of Land Record, Khalapur, Taluka-Khalapur, District-Raigad, is appointed as Court Commissioner for the measurement of the suit property survey no.13 hissa no.2/B and Gut no.171/1, admeasuring 0-15-1 situated at mouje Dheku, Tal.Khalapur,Dist.Raigad.
3. The Court Commissioner is directed to measure the suit property as per the survey manual in the light of plaint and shall submit report along with map within one month from the date of this order.
4. The plaintiffs are directed to bare the expenses of the Court Commissioner and shall supply necessary documents and all other facilities to the Court Commissioner.
5. The Court commissioner to carry out the measurements after giving in writing notice to both parties and the people of adjoining areas of the suit property, asking them to remain present at the time of the commenced work at the suit property.

6. The Court Commissioner to take the aid of police, in case of intervention by anyone, for the measurement of the suit property, if necessary.
7. Writ be issued to the Court Commissioner accordingly.

Place: Khalapur

Date: 13.08.2018

(S.M.Gade)

Civil Judge,J.D, Khalapur