

CNR No. MHRG080013242023 	<u>R.C.S. No. 59/2023</u> Shukracharya Bhagwan Gholap Vs. Nana Babu Solanki
--	--

ORDER BELOW EXH. 17

1. This is an application filed by plaintiff for appointment of Court Commissioner under Order 26 Rule 9 of Code of Civil Procedure, 1908.
2. Heard learned advocates of both the parties. Perused the application and say filed below Exh. 22.
3. According to the plaintiff the suit property situated at Shil, Tal. Khalapur, Dist. Raigad, City Survey no. 1921 admeasuring 273.50 square meter out of 1321.80 square meter adjacent to northern boundary and City Survey no. 1923 admeasuring 7.20 square meter. The suit property is owned and possessed by plaintiff by register sale deed dated 06/01/2022 and 21/01/2022. But defendants created encroachment by construction over the suit property in 12.82 square meter and also encroached upon City Survey no. 1923 which is included in City Survey no. 1921. In spite of repeated instructions defendants continued his construction. Therefore, present suit is filed for declaration and for removal of encroachment and possession thereof. However, present dispute is boundary dispute and it cannot be resolved unless and until measurement carried out in the suit property.

4. Ld. Advocate for the defendant filed say below Exh. 22 contending that defendant is having possession over suit property since 1980 and he has took defense of adverse possession. The construction stated in the application was more than 40 years old and it is not newly constructed. Defendant has not made any encroachment. Present application is made only for collection of evidence. Therefore, present application is liable to be reject.

5. Heard both the Ld. Advocates.

6. Considering the nature of suit it appears that boundary dispute is the main cause behind this suit. It can not be resolve without demarcation and measurement. Defendant has not specifically stated the area in which he has adverse possession. Further in the written statement description of the suit property is also denied by the defendant. As per the provision of o.26 R.9 of the C.P.C. court commissioner may be appointed in boundary dispute. Which is necessary to final adjudication of the suit. Therefore, I pass following order :-

:: ORDER ::

- 1) Application is allowed.
- 2) T.I.L.R., Khalapur is appointed as Court Commissioner and he is directed to measure the suit property situated at Shil, Tal. Khalapur, Dist. Raigad, City Survey no. 1921 & 1923. He should measure encroached portion if any over the suit property.
- 3) After measurement Court Commissioner to file report along

with map showing actual position over suit property of area acquired by defendant, construction made if any as mentioned above.

- 4) Plaintiff to bear expenses of measurement and comply accordingly.
- 5) After due compliance issue commission writ.

Place – Khalapur.
Date – 17/07/2026.

(Smt. S. S. Deshmukh)
Civil Judge, J. D., Khalapur.

Certificate

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

Court Name	:	Smt. S. S. Deshmukh CJJD & JMFC, Khalapur
Name of Steno	:	Shri. Rakesh S. Patil Stenographer, Grade – III
Date of Order	:	17/07/2026
Order signed by P. O. On	:	17/07/2026
Date of PDF & Order uploaded on	:	17/07/2026