



ORDER BELOW EXH.12

- 1) By virtue of this application under Order XXVI Rule 9 of Code of Civil Procedure, 1908, plaintiff is seeking to appoint a court commissioner to empower him to visit and inspect the suit property and to submit the report, panchanama and map stating the actual status of property.

- 2) The encapsulated facts of the plaintiff's case are that, plaintiff is owner and possessor of the suit property. Plaintiff has derived his ownership through registered sale deed bearing no.802/2016. Defendants are no where concern of the suit property. Defendants are also not having any property which is situated adjacent to the suit property. There is no boundary dispute between them.

- 3) It is a contention of plaintiff that, in the month of June-2023, defendants appeared upon the suit property and tried to disturb the lawful possession of the plaintiff. It is the further contention of plaintiff that, in the month of May, defendants entered in the suit property and forcefully started digging an area admeasuring about 500 sq.ft. from the southern side of suit property. Finding no other alternative to protect the suit property, plaintiff filed present suit.

- 4) By way of present suit, plaintiff claimed following relief.
 - a) As to declaration i.e. to declare plaintiff as lawful owner of the suit property
 - b) As to possession i.e. to remove the illegal possession of defendants and handover the vacant and peaceful possession of 500 sq.ft. of land situated to which the southern side of suit property.
 - c) As to injunction i.e. to restrain to the defendant from disturbing the lawful possession of plaintiff upon the suit property.

- 5) Defendants failed to file their written statement. Hence, suit is proceeded without written statement of defendants vide order dated 20/04/2024 passed below Exh.1.

- 6) When the suit was listed for evidence of plaintiff, plaintiff filed present application. By way of present application, plaintiff submitted that, defendants have forcefully encroached upon suit property from southern side. In order to ascertain the alleged encroachment, it is necessary to appoint TILR as Court commissioner to measure the suit property and determine the exact encroachment if any. Plaintiff therefore, prayed to appoint TILR as Court commissioner and direct him to conduct a measurement of the suit property and submit a map and report to the Court. On the above reasons plaintiff prayed to allow the application.

- 7) Defendants filed say below Exh.14 thereby resisted the prayer of plaintiff. According to them, present application is not tenable in

law. Defendants prayed to reject the application.

8) Advocate of the plaintiff argued that, to bring actual status of suit property, court commissioner may be appointed. He lastly argued that, if commissioner is appointed it will not amount to collection of evidence. Rather, it will assist the court to decide the issue between the parties on merits.

9) Advocate of the defendants argued that, plaintiff came with a case that he is in lawful possession of suit property. He has also claimed relief of injunction. There is no boundary dispute between plaintiff and defendants. In such circumstances, plaintiff is burden to prove his plea. Plaintiff cannot be permitted to collect evidence by court commissioner.

10) In the light of the averments in the application and contentions in the reply, the material on record and the rival submissions at the bar, the following points arise for my consideration. I have recorded my findings against each of them for the reasons to follow:

<u>Sr. No.</u>	<u>Points</u>	<u>Findings</u>
1]	Whether the application deserves to be allowed?	No
2]	What Order?	Application stands rejected

As to point no.1 and 2 :-

11) On scrutiny of Order XXVI Rule 9 and Section 75(b) of code of civil procedure, 1908, it says that, a court commissioner can be appointed, where it is requisite or proper, for the purpose of elucidating any matter in dispute between the parties. The meaning of word “elucidate” is means to explain/to make something clear. It is also well settled that, at the time of appointing court commissioner, court has to also keep in mind following points:

- i) The pleadings of both the parties,
- ii) Relief claimed in the suit,
- iii) Appointment of Court Commissioner shall not be to grant per-trail decree, and
- iv) Necessity to appoint court commissioner to decide real controversy between the parties.

12) Upon perusal of pleadings, present suit is based primarily on the claim of possession and ownership. The plaintiff alleged that, defendants have encroached upon the suit property upto 500 sq.ft. from the southern side. Admittedly there is no boundary dispute involved in the present suit. The allegation of plaintiff is that, defendants have illegally occupied the possession of land admeasuring about 500 sq.ft. from the southern side. In such circumstances, the issue does not amount to a boundary dispute. It is well settled that, a Court commissioner cannot be appointed merely for the purpose of the collecting evidence on behalf of parties. In the

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present case, the plaintiff is attempting to gather evidence through the appointment of commissioner which is not legally permissible in a suit of this nature. I am of the view that, as the alleged dispute does not pertain to the boundaries between the parties, there is no justification for appointing a Court commissioner to measure the suit property. Accordingly point no.1 is answered in negative. In answer to point no. 2 following order is passed :-

ORDER

- 1] Application is rejected.
- 2] Cost in cause.
- 3] Application is disposed of accordingly.

Place : Shrivardhan.
Date : 31/07/2025

(S. K. Shaikh)
Civil Judge Junior Division,
Shrivardhan.