

MHRG140015402024

**RCS No. 99 of 2024****Dilip Ramchandra Patil**

v.

Haribhau Namdev Joshi**Order passed below Exhibit 35 in RCS No. 99 of 2024**

1. The Plaintiff has filed this application under Order 26, Rule 9 of the Code of Civil Procedure (CPC). The plaintiff has submitted that the defendant has denied encroachment. But defendant does not have any easementary right for suit property. Therefore, it is important to bring the extract condition of the suit property on record. It will help the court to decide the suit on merit.
2. Defendant has given no objection.
3. Heard Ld. Advocate of the plaintiff and defendant.
4. The present suit is for declaration and injunction with respect to the suit property. It is alleged that the defendant does not have any easementary right over the suit property. Therefore, it is essential to appoint a court commissioner to adjudicate the matter effectively.
5. In view of the above, oral evidence would not suffice. Therefore, expert opinion will be required to ascertain if there

is any encroachment.

6. Considering the nature of the suit which is for removable of encroachment, appointment of court commissioner is necessary. The opinion of court commissioner will assist this court to ascertain whether there is encroachment. Appointment of court commissioner will not cause any prejudice to the defendant. Therefore, application deserves to be allowed. Accordingly, I proceed to pass the following order:

ORDER

1. Application at Exhibit 204 is allowed.
2. The Superintendent of City Survey Officer, Uran is appointed as Court Commissioner.
3. The Court Commissioner is directed to visit and measure CTS No. 221/11B admeasuring 0-03-0 hrp situated at Chirner, Uran, District Raigad.
4. The Court Commissioner is directed to measure the area belonging to the plaintiff and defendant and ascertain the area in possession of the parties.
5. The Court Commissioner is directed to carry out the work assigned after giving notice in writing to the plaintiffs as well as defendants regarding the date and time of work of

commission.

6. Parties are directed to appear and act as per intimation given by the Court Commissioner.
7. The Court Commissioner is directed to prepare report along with map and submit the same to this Court on or before 28.04.2025.
8. Parties are directed to supply all necessary documents as required by the Court Commissioner for the purpose of carrying out the work of commission.
9. Plaintiff is directed to bear the charges towards fee of Court Commissioner.
10. Issue letter to the Superintendent, Survey Officer, Uran accordingly.

Place : Uran
Date : 01.04.2025

Sd/-
(Ms. G.K.R. Tandon)
Jt. Civil Judge, Junior Division
Court No.2, Uran