

ORDER BELOW EXH. 60 IN REGULAR CIVIL APPEAL NO.79/2010
(CNR NO: MHRT040005302010)
(Salim Ahamad Kureshi Vs. Vaman Ramaji Jadhav)

1. The application submitted by the Court Commissioner and the reply filed by the respondent are perused. The appellant has failed to file any reply to the report or application of the Court Commissioner.
2. It is contended by the Court Commissioner that during the proposed measurement, there is a possibility of complications, as the Talathi is required to give effect to the sub-division of the properties. It is stated that in the absence of such effect on the 7/12 extract regarding division of the properties, effective measurement cannot be conducted. Hence, liberty is sought to carry out the measurement after effecting such sub-division through the Talathi.
3. Per contra, the respondent has contended that as per the 7/12 extract and the revenue map, the area admeasuring 0 Hectare 26.14 R is owned by the respondent, out of which land admeasuring 0 Hectare 24.70 R remains with this respondent. It is further contended that on the 7/12 extract and the map, the said land is shown as Survey No. 60/A/1 and therefore, the measurement as directed by the Court would not cause any complication or controversy. Hence, it is prayed that the Court Commissioner be directed to carry out the measurement as already ordered by the Court.

4. Heard learned advocates for both sides. They have argued in support of their respective contentions.

5. It is pertinent to note that by order dated 18 January 2020, the learned predecessor-in-office had issued detailed directions to the Court Commissioner to carry out measurement with the help of revenue records, conveyance deeds, non-agricultural sanction orders, and measurement maps. Further, by specific direction No. 5, the Court Commissioner was directed to give his opinion in the report as to in which portion the disputed structure (meat shop) is situated, after carrying out measurement of Hissa No. 8B/1 and 8B/2.

6. A careful perusal of the record reveals that the learned predecessor-in-office had already directed the Court Commissioner to measure the suit property on the basis of available conveyance deeds, revenue records, and sanctioned maps. In such circumstances, the present apprehension expressed by the Court Commissioner appears to be purely presumptive and not based on any actual difficulty encountered on the spot.

7. It is significant to note that the Court Commissioner has not acted with due diligence, as the commission was issued in the year 2020 and, for nearly four to five years, no measurement report has been submitted. The present request seeking further time on the pretext that sub-division is yet to be effected by the Tahsildar

cannot be accepted at this belated stage.

8. It is not the case of the Court Commissioner that he has actually visited the spot and that during the process of measurement any real or practical difficulty arose. Therefore, at this stage, it would be wholly unjustified to keep the matter pending indefinitely till sub-division is effected by the Talathi or Revenue Authority.

9. It is well settled that appointment of a Court Commissioner under Order XXVI Rule 9 of the Code of Civil Procedure, 1908 is meant to assist the Court in elucidating matters in dispute and not to delay the proceedings. The Court Commissioner, though appointed by the Court, discharges a public duty and is expected to act diligently and expeditiously.

10. The Tahsildar or Revenue Authority is expected to assist the Court Commissioner in carrying out measurement and not to become an obstacle in judicial proceedings, which are required to be decided at the earliest. If any assistance is required from the Revenue Department, it is incumbent upon the Court Commissioner to obtain the same by following due process of law.

11. The continued non-submission of the measurement report by the Court Commissioner has caused a serious impediment to the progress of the proceedings, which have remained pending for a

considerably long period solely for want of the commission report. Such delay defeats the very purpose of appointing a Court Commissioner and frustrates the mandate of expeditious disposal of civil proceedings.

12. In view of the above discussion, this Court is of the considered opinion that the request made by the Court Commissioner deserves to be rejected and the Commissioner must carry out the measurement strictly in accordance with the earlier directions of the Court. Thus, following order is passed:-

ORDER

1. The request made by the Court Commissioner seeking postponement of measurement is hereby rejected.
2. The Court Commissioner is directed to carry out measurement strictly in accordance with the directions issued by this Court vide order dated 18th January 2020 and this order.
3. A copy of the said directions be again forwarded to the Court Commissioner for clarity and strict compliance.
4. If, during execution of the commission, any subdivision or assistance from the Talathi or Revenue Authority is required, the Court Commissioner is at liberty to approach the concerned authority and obtain such assistance as per law, without awaiting further orders of the Court.
5. The Court Commissioner shall submit his report within a period of two months from today.
6. In case of failure to submit the report within the stipulated

period, the Court Commissioner shall remain personally present before the Court and seek extension of time by filing a proper application showing sufficient cause.

7. Copy of this order along with a copy of the order appointing the Court Commissioner be furnished to the Court Commissioner forthwith.

Khed.
Date-14.01.2026.

sd/-
(V.T. Nirgude)
District Judge – 2, Khed.

Certificate

I affirm that the contents of this pdf file order are same word as per original order.

Name of Stenographer : S.K.Inamdar

Court Name : District Judge 2, Khed.

Date of Decision : 14.01.2026

Order Signed by P.O. on :14.01.2026

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