

ORDER BELOW EXH. 110 IN REGULAR CIVIL SUIT NO. 25/2009

This is an application filed under Section 75 read with Order XXVI Rule 9 of the Code of Civil Procedure, 1908 for appointment of court commissioner. According to the plaintiff during the pendency of this suit defendant Nos. 1 to 4 have dug the well in the suit property. Thereafter the amendment is carried out. Now to ascertain the specific portion of well plaintiff has asked the appointment of court commissioner. '

02. This application is resisted on behalf of defendant Nos. 1 to 4. It is contended that court commissioner cannot be appointed for collection of evidence. It is further contended that it is admitted fact that there is a well in the suit property. But only to protract the trial, this application is filed.

03. Heard learned advocate Shri. Gavankar for plaintiff. Learned advocate for defendants not made available for submission. I have gone through the judgment of the Hon'ble Bombay High Court in case between **Dattatray Kalake vs. Bapu Bhivungade** reported in **2015(1) Mh. L. J. 892**. The specific spot of the well is required to be brought on record and that can be done only by appointment of court commissioner. Judgment cited above is applicable to the present set of facts. Hence, application is allowed.

04. The cadestral surveyor of Land Record, Malvan is hereby appointed as court commissioner. He is directed to issue notices about court commission to both parties well in advance and then visit the suit property. Thereafter he should measure entire suit property and to show specifically the spot of alleged well which is situated in the suit property along with its measurement and shall submit his self-explanatory report as early as possible.

05. The plaintiff is hereby directed to deposit Rs. 3,000/- tentatively as court commissioner's fee in the Court within 8 days from the date of the order.. If any excess court commission fee is required then plaintiff to deposit the same in the Court.

... 2...

06. After deposition of court-commissioner's fee issue court commission writ along with copy of plaint, copy of written statement, copy of 7/12 extract, copy of Exh. 110 and order passed thereon.

07. If plaintiff failed to deposit the court commissioner's fee then application be treated to be rejected.

Sd/-

(S. D. Chavan.)

Jt. Civil Judge, Jr. Dn. Malvan.

Date : 04.04.2015.