



ORDER BELOW EXHIBIT 85 IN RCS NO. 33/2019
(Passed on 19/12/2019)

This is an application by the plaintiff for appointment of TILR, Malvan as Court Commissioner for local inspection of the suit properties.

2] It is the contention of the plaintiffs that the present suit is instituted for a declaration about easementary right of 12 feet wide road passing from suit properties No.3 and 4 alongwith consequential relief of perpetual injunction. Defendant No.1 has resisted the suit by filing his written statement at Exhibit 65. During the pendency of the suit, mutation entry No.2302 was mutated in respect of suit property No.4 and the said property was further divided into 8 parts. Thereafter, the plaintiffs amended the plaint so as to bring on record the change in suit property No.4. Defendant No.1 has filed his additional written statement. He has denied the existence of the road from the suit properties. Therefore, in order to bring the actual position about the disputed road the appointment of Court Commissioner is necessary. It is the further contention of the plaintiffs that an advocate Court Commissioner was previously appointed and he has submitted his report at Exhibit 48. However, defendant No.1 has denied the said report. In this situation it is necessary to ascertain whether any road passes from suit properties No.3 and 4 or not and the said road passes from which of the Hissa Numbers 2B1 to 2B8. It is the contention of the plaintiffs that in order to ascertain the aforesaid facts the cadastral surveyor is an expert and his appointment will help to bring the real position on

record. Hence, the present application.

3] Defendant No.1 strongly resisted the application by filing his say. It is his contention that the present application is filed only for the purpose of creating a reason for extending the status quo order. It is his contention that the plaintiffs have got knowledge after the amendment carried out by them as to from which property the road passes. Therefore, the present application is moved only in order to delay the hearing. Moreover, the appointment of Court Commissioner cannot be made for the purpose of collecting evidence. Hence, it is prayed that the application be rejected.

4] Heard both the sides. Perused the record and proceeding of the case.

5] As mentioned in the application the present suit is for declaration of prescriptive easementary right of way from the suit properties and for perpetual injunction. The suit is pending for hearing on the interim application. Prior to the appearance of defendant No.1 an exparte ad-interim injunction was granted against him. At the same time an order of exparte Court Commission for inspection of the suit properties was made vide Order 39 Rule 7 and 8 of the C.P.C. The record of the case shows that the advocate Court Commissioner has filed his report at Exhibit 48.

6] Now the plaintiffs are praying for appointment of cadastral surveyor i.e. TILR for local inspection of the suit properties. However, considering the stage of the suit i.e. being pending for

hearing on the interim application, I am of the view that the appointment of T.I.L.R is not necessary at this stage. The hearing of the interim injunction application is to be done on the basis of prima facie material on record. Considering the urgency in the matter and for the purpose of inspection as enumerated in Rule 7 of Order 39 of the C.P.C. a Court Commissioner has already submitted his report. In my opinion, the hearing of the interim application can be completed on the basis of the said report.

7] Therefore, without going into the merits of the present application, I am of the view that the application is liable to be rejected. The plaintiffs are at liberty to move a separate application at an appropriate stage seeking similar relief, if necessary, which can be considered on its own merits at that stage. Hence, I proceed to pass following order-

ORDER

1) The application is rejected.

2) Costs in cause of the suit.

Date : 19/12/2019
Place : Malvan

Bhanupratap B Chouhan
Civil Judge Junior Division

“CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL
SIGNED ORDER/JUDGMENT.”

Chandrakala Vasant Chavan
NAME OF STENOGRAPHER

Name of the PO	Shri. Bhanupratap Chouhan
Date of pronouncement	19/12/2019
Order signed by PO on	19/12/2019
Order uploaded on	20/12/2019