

Order below Exh.98

=====

This is an application made by the plaintiff under Order 26 Rule 9 of CPC [For short "CPC"] to appoint a Court Commissioner.

2] It is the contention of the plaintiff that he had filed suit initially seeking a removal of encroachment and possession. A previous Court Commissioner's report (Exhibit 46) confirmed the sandas (toilet) was built on the plaintiff's northern boundary. Based on this, the plaintiff amended the suit with a specific prayer directing the defendant No.1 to remove and relocate sandas (toilet) at least 15 meters from the plaintiff's well.

3] It is further contended that the previous Court Commissioner's report primarily focused on the encroachment issue but did not provide detailed measurements of the encroached portion. The plaintiff, in light of the amended suit, seeks a fresh Court Commission to Confirm the location of the plaintiff's borewell and its distance from the disputed sandas (toilet) and tank. Indicate the Chirebandi well on the site plan and measure its distance from the sandas and sandas tank. Hence prayed to allow the application.

4] Defendant No.1 resisted the application by say on the overleaf of the application itself. It is her contention that the application is not tenable in the eyes of law. Plaintiff has made several applications for appointment of court commissioner. The one made at Exh.64 was not pressed by the plaintiff. The plaintiff again cannot make a similar application. On these grounds she prayed to reject the application.

5] Perused record. Heard both sides. Needless to discuss the argument, which are in consonance with the contents of the application and say.

6] The plaintiff has filed suit for issuing a mandatory injunction to Defendant No. 1 directing her to remove the disputed

//2//

sandas (toilet) and sandas (toilet) tank. Alternatively, Defendant No. 1 should be directed to relocate the sandas to a minimum distance of 15 meters from the plaintiff's well. In such situations it is necessary to bring on record the exact distance between the disputed sandas (toilet) and the plaintiff's borewell and well. At the same time it is also necessary to know the exact location of the borewell and well. These measurements can be done only by experts.

7] The existence of sandas (toilet), sandas tank and plaintiff's borewell and well is not in dispute. Therefore appointing a court commissioner will not amount to collection of evidence rather it would be just and proper for the purpose of elucidating the matter in dispute. In order to locate and measure the distance between the borewell and well from the sandas and sandas tank it would be just and proper to investigate the property of plaintiff ie Survey No. 723(956) Hissa No. 18 A as well as the property of defendant No.1 i.e Survey No. 723 A Hissa NO. 13 A. The earlier application was on a different footing therefore it cannot be said that the present application is on the same grounds as that mentioned in the earlier applications. Therefore from the above discussion the application deserves to be allowed. Hence following order.

<u>ORDER</u>	
1	The application Exh.98 is allowed.
2	The Deputy Superintendent of Land Records, Malvan, is appointed as the Court Commissioner with following directions, 1. a) To conduct a proper site investigation of property bearing Survey No. 723(956) Hissa No. 18 A and Survey No. 723 A Hissa NO. 13 A. b) Show the location of the plaintiff's borewell and Chirebandi well on the property bearing Survey No. 723(956) Hissa No. 18 A and measure its distance from the sandas



R.C.S.no.2/2013

Shrikant Vs. Devyani etc.

	(Toilet) and sandas tank on the property bearing Survey No. 723 A Hissa NO. 13 A.
3	He shall submit his report on or before 09/06/2025.
4	The plaintiff shall bear the commission fee. He shall deposit the commission fee in the concerned office as per rules within 14 days from the date of order.

Date : 01.04.2025

Place : Malvan



(M.R. Fakih)

Joint Civil Judge (J.D.) & J.M.F.C., Malvan.