



Order passed below Exh. No.40 and 43 in RCS No. 22/2026

These applications are filed by Plaintiff No. 3 seeking an appointment of a Court Commissioner for local investigation of the suit property i.e. Survey no.63/49 admesuring 0.25.00 H.R. Assesed at 0.21 Rs.Ps. Situated at Tirlot Taluka Devgad Dist Sindhudurg.

The Plaintiff contends that a "status quo" order was passed at Exh. 5 regarding the suit property. It is alleged that despite the knowledge of said order, Defendant No. 1 is will fully violating the court's directions by continuing new construction on the suit property. The Plaintiff has produced certain photographs to support this claim and seeks the appointment of an advocate as Court Commissioner to record the current status, measurements, and internal structure of the construction to prevent further complications. The Plaintiff further requests that in view of the Defendant's past conduct of avoiding court notices and the potential for a law and order situation at the site, the Commissioner be directed to execute the commission without prior notice and with police protection from Vijaydurg Police Station.

Heard the learned Advocate for the Plaintiff. Perused the record. It reveals that suit is proceded ex-Parte against defendant no.1 The core dispute involves a claim of unauthorized construction in violation of a court order. To determine the actual state of affairs existing on the spot, a local investigation is necessary. Such a report will assist the court in adjudicating the alleged breach of status quo order and the main suit for partition and permanent injunction.

While Order XXVI Rule 18 usually requires notice to parties, The requirement of notice under Order XXVI Rule 18 is a rule of prudence. However, it cannot be used as a shield by a party allegedly in breach of a status quo order. When there is an allegation of violation of a status quo order, the court can not be a mute spectator. To verify whether its own order is being mocked, the court can bypass the technicality of prior notice to ensure an honest report of the spot situation is brought on the record.

This Court finds that in present case, to preserve the sanctity of the judicial process and to verify the spot situation 'as is', an emergent, notice-free commission is essential. Hence to avoid the purpose of the commission being frustrated by delay, the court may exercise its discretion. Considering the allegations of ongoing construction, an urgent report is warranted. Hence, the following order:

ORDER

1. The application below exh.40 and 43 are allowed.
2. Adv. Shri. K. K. Marathe is hereby appointed as Court Commissioner to visit the suit property.
3. The Court Commissioner is directed to take detailed measurements and photographs internal and external of the ongoing construction on suit property if any. Prepare a map/sketch showing the internal structure and current stage of construction. Draw a detailed Panchanama of the spot situation.
4. The Commissioner shall execute the commission without prior notice to the Defendants to ensure the spot situation is captured as is, as requested by the Plaintiff in view of the alleged urgency.
5. The In-charge of Vijaydurg Police Station is directed to provide necessary police protection to the Court Commissioner during the execution of this commission to maintain law and order after payment of necessary fee.

6. Plaintiff to deposit Commissioner's fees fixed at ₹ 4000/- urgently .
7. The Commissioner shall submit the report along with photographs and the map on or before the next date.

(Shrikant S. Pachandi)

Dated : 27/03/2026

Civil Judge Junior Division, Deogad.

Deogad.