

**MHSI100002052018**



**-: REGULAR CIVIL SUIT NO. 20 OF 2018 :-**

**-: ORDER BELOW EXH. NO. 26 :-**

This is an application filed by the plaintiff to appoint Taluka Inspector of Land Records for making survey and map of construction and encroachment made by Defendants under Order XXVI Rule 9 of the Code of Civil Procedure.

02. It is contended that, the Plaintiff has filed the present suit against Defendants for injunction. That during pendency of the suit, Defendants encroached upon suit property and constructed platform for water tank and toilet tank. So also, Defendants removed the fencing of suit property and constructed wooden fencing. That the defendants also constructed the building and shade over suit property by making encroachment. Hence, in order to bring the same on record, the TILR is required to be appointed for making survey and to file map alongwith report. Hence it is prayed that the Application be rejected.

03. The defendants No. 1 and 2 objected the application on the ground that, the application is false and frivolous. The application is filed only to delay the matter. It is contended that, Plaintiff did not mention as to where, on which side and how much the encroachment is made. That the defendants has not made any illegal construction. Hence, the Application is prayed

to be rejected.

04. Perused the Application. Heard Ld. Advocates for Plaintiff and Ld. Advocate for Defendants.

05. This is a suit for permanent injunction. The plaintiff is seeking directions to TILR to measure the suit property for showing exact position of encroachment and construction made by Defendants. It can be seen that, in the application, the Plaintiff has not mentioned as to on which side, how much encroachment is made. By appointing TILR and obtaining his report, it appears that Plaintiff wants to collect the evidence in order to prove the case. Considering the fact that, when Plaintiff's suit is neither for removal of encroachment nor on basis of boundary dispute, the question arises as to whether such prayer can be granted. It is pertinent to note here that, it is settled law that Court commission cannot be appointed in order to collect evidence. By granting such Application, in my view it would amount to collection of evidence.

06. The object of O.26, R.9 of the Civil Procedure Code is not to assist a party to collect evidence. In suit for injunction the parties have to prove their possession over the suit properties. To establish the possession, the party cannot take help of the Court by appointing a court commissioner. Thus, it is well settled that, under such circumstance, no court commission can be appointed. Hence, the Application is liable to be rejected. It is general rule that, cost shall follow events. Accordingly, I proceed to pass the following:

**:: ORDER ::**

Application is rejected with costs.

(Dictated and pronounced in open Court.)

Place : Dodamarg.  
Date : 06.08.2022

(Y. P. Bavkar)  
Civil Judge (Junior Division),  
Dodamarg.