

**Order Below Exh.35 In Reg. Civil Suit No.258/2024**  
**(Sou. Sita Sudamalli etc. Vs. State of Maharashtra etc.)**  
**(CNR No.MHSN050016782024)**

1. The present application is filed for the relief of appoint of court commissioner for inspection of the suit property.

2. Plaintiff submitted that the suit is filed for the relief of the mandatory as well as permanent injunction. The defendant encroached approximately 3 to 4 foot in the plot owned by the plaintiff and constructed sewer/gutter. At the time of construction of said sewer/gutter also demolished the toilet and part of his house, without following due course of law and even without issuing any notice. Moreover, defendant has not produced any documents in the court to substantiate his right to construct the sewer/gutter. Thus, measurement of the plot of the applicant and area under sewer/gutter from his plot will make picture clear. Accordingly prayed to allow the application.

3. Defendant No.1 strongly objected the relief sought by the plaintiff. It is submitted that, the suit property shown as 24 R land, but no specific description of plot each plaintiff is given in the plaint. Moreover, the suit is yet to posted for hearing and now pending for argument of application for temporary injunction. It is rule of law that the plaintiff should prove his case. Here plaintiff yet to stepped into witness box. Thus, application needs to be rejected, being premature.

Moreover, plaintiffs have asked for construction of sewer/gutter alongside of the plot and the new road to avoid water logging.

4. Heard both sides and perused the record of the proceeding.

<b>Sr. No.</b>	<b>Point For Determination</b>	<b>Answer</b>
1	Is plaintiff entitled for the relief of inspection by the court commissioner ?	No.
2	What order?	As per the final order

### **REASONS**

5. It is settled principle that in the suit for removal of encroachment to ascertain the actual area under encroachment measurement at the hand of expert is necessary, as no lay man would prove the area under encroachment. The provision envisages that such inspection of suit property by an expert should not be the medium of collection of evidence at the hands of the court.

6. In the light of the above stated settled position, instant application is taken into consideration.

7. The present suit is filed for the relief of mandatory as well as permanent injunction. It is case of plaintiff that the defendant started construction of sewer/gutter alongside of the

new road and his plot. However, said sewer/gutter is constructed in the plot of the plaintiff. The defendant No. 1 denied all such allegation by his written statement.

8. At prima facie the defendant had not denied the title of the plaintiff over the suit property, but come with specific assertion that construction of sewer/gutter is not in the plot of the plaintiff. Thus, in view of above legal position in the factual background of this case instant application is taken into consideration.

9. It is pertinent to mention here that the commission report is opinion of the commissioner about the fact came across to him at the suit site. Thus, it must be taken into consideration along with the evidence adduced by the plaintiff. As mentioned above yet no evidence to be adduced by the plaintiff to support his assertions. The court commissioner can be appointed if the court finds it necessary for the just decision of the case. However, the suit is, at present, pending for hearing on the application for temporary injunction.

10. Apart from it, the plaintiffs have come with case that defendant is constructing sewer/gutter in their plot. however, the suit property is not specifically described by four boundaries of plot of each plaintiff. Thus, possibility of collection of evidence thorough the court commissioner can not be ruled out. The court commissioner can be appointed when it is necessary for just decision of the case, however it should not be

a medium for collection of evidence at the hands of court. Thus, for the above discussion I come to conclusion that the application is premature. My view is supported by the law ruled in the case of **Shantaram Kekan Vs. Bhausahab Kekan, 2023(1) All MR 437**. In view of above discussion, I come to conclusion that the application can not be granted, thus following order.

**ORDER**

1. Application is rejected.
2. No order as to costs.

Islampur.  
Date: 26.11.2024

(Mukul M. Chitale)  
Jt. Civil Judge Sr. Dn., Islampur.