

MHSN070006112018



Order below Exhibit 66 in R.C.S. No.112/2018  
( Balu Kundlika Londhe V/s. Rupeshkumar Annappa Londhe)

1. The present application is filed by defendants, for the appointment of Court Commissioner as per Order XXVI Rule 9 of the Civil Procedure Code, for measurement of properties bearing C.S. No. 1006 and C.S. No. 1007 situated at Mouje Hinganagaon, Taluka Kavathe Mahankal, District Sangli

2. It is contention of defendants that the plaintiff has filed the present suit for perpetual injunction in respect of property bearing C.S. No. 1006. The property bearing C.S. No. 1007 of defendants is situated on the western side and, which is being used as a passage for access to their property bearing C.S. No. 1005, situated on the northern side of the same. The plaintiff has no right or interest in the said passage, especially when a Gram Panchayat road exists on the southern side of the property of the plaintiff.

3. It is further contention of the defendants that, in order to avoid further complications, on 11/03/2025 they have got measured C.S.No.1007, through the Deputy Superintendent of Land Records, Kavathe Mahankal and have erected fencing within their boundary. However, the plaintiff is unnecessarily raising disputes and has filed multiple complaints and proceedings. As a part of the same, the plaintiff has filed an application at Exh. 61, for claiming mandatory injunction, in this suit.

4. It is further contented that, in order to resolve the boundary

dispute finally, it is necessary to carry out joint measurement of properties bearing C.S. No. 1006 and 1007 through the Government authority. Hence, it is prayed that the Deputy Superintendent of Land Records / City Survey Officer, Kavthe Mahankal be appointed as Court Commissioner to measure the properties, fix boundaries and submit report, map and panchanama before this Court.

5. The Plaintiff filed his say Exh. 70 and strongly objected to allow this application. It is contention of the plaintiff that, the contents of the application are false and not admitted. It is denied that the defendants are using C.S. No. 1007 as a lane. It is contended that the defendants have no possession over C.S. No. 1007 and they are using another road for access. It is further contended that earlier the father of the defendants had filed Regular Civil Suit No. 57/2012 in respect of C.S. No. 1007 and the said suit was dismissed and the appeal bearing R.C.A. No. 132/2014 was also dismissed.

6. It is further contention of the plaintiff that, after grant of interim protection by the appellate Court in this suit, on 11/03/2025 the defendants forcibly measured the property and removed the plaintiff's shed and structure and erected fencing, thereby violating the order of the Court. Thereafter, by order dated 15/05/2025, this Court has already directed restoration of the original position and the said order is in force.

7. It is further contended that the defendants have not filed any counter-claim and therefore they cannot seek such relief in the present suit. The application is filed only to collect evidence and to legitimize illegal acts. Therefore, the plaintiff has prayed for rejection of the application.

8. Heard ld. advocate for both sides. Perused the record.

9. Learned Advocate for the defendants submitted that there is boundary dispute between the parties and unless proper measurement of both properties is carried out, the Court will not be able to effectively adjudicate the matter. It is submitted that the plaintiff himself mentioned C.S. No. 1007 as boundary in the plaint, thereby admitting its existence. It is further submitted that there was no stay order in respect of C.S. No. 1007, as the suit property is C.S. No. 1006, and therefore the measurement dated 11/03/2025 was lawful and carried out to avoid future disputes.

10. In retort, Ld. Advocate for the plaintiff submits that the defendants cannot raise issues relating to C.S. No. 1007 as no counterclaim has been filed, and prior litigation of the same property has already been decided against them and attained finality. It is further submitted that despite interim court protection, the defendants unlawfully measured and fenced the suit property, thereby restoration was ordered. The present application is merely an attempt to legitimize these illegal acts and collect evidence, which is not permissible in law.

11. Considering the contentions of both sides, documents on record and arguments advanced by learned advocates for both sides, following points arise for determination and my findings against each of them for the reasons given below :

| <b>Sr. No.</b> | <b>Points</b>                                                                                        | <b>Findings</b>          |
|----------------|------------------------------------------------------------------------------------------------------|--------------------------|
| 1)             | Whether it is necessary to appoint the Court Commissioner for elucidating the matter in controversy? | NO                       |
| 2)             | What order ?                                                                                         | Application is rejected. |

## R E A S O N S

### AS TO POINT NO. 01:-

12. The present suit is for perpetual injunction simpliciter in respect of property bearing C.S. No. 1006 of village Hingangaon. The relief claimed by the plaintiff is limited to the protection of his alleged possession over the property bearing C.S. No. 1006. The plaintiff has not sought any declaration of title, nor any relief regarding fixation of boundary of his or defendant's property. Defendants appeared and filed their written statement Exh. 39. On the basis of pleadings of both the parties, issues were framed at Exh. 47. The burden of all issues is solely on the plaintiff. The suit is fixed for evidence of the plaintiff, this is when the application under consideration is filed.

13. Upon perusal of the record and submissions, it appears that the primary question in this suit is whether the plaintiff is in possession of C.S. No. 1006 and whether the defendants have interfered or are likely to interfere with such possession, therefore, the dispute raised by defendants regarding C.S. No. 1007 and their alleged use of access is not directly in issue in the present suit, it is a separate dispute for which appropriate remedy is available to defendants. It is also important to note that earlier litigation has taken place between the parties in respect of C.S. No. 1007. Certified copies of the same are filed on record. It shows that, the father of the defendants namely Annappa Londhe had filed Regular Civil Suit No. 57/2012 in respect of C.S. No. 1007 of village Hingangaon, against the deceased predecessor of plaintiffs namely Balu Londhe, and the said suit was dismissed. The appeal preferred against the said Judgment and decree bearing R.C.A. No. 132/2014 was also dismissed. Thus, the issue regarding C.S. No. 1007 has already been subject matter of judicial determination.

14. Further, in the present suit, the application for temporary injunction was initially rejected by this Court, however, the Hon'ble District Court Sangli, vide order dtd. 18/09/2024, in M.C.A. No. 97/2019 granted interim protection to the plaintiff. Thereafter, the plaintiff filed application Exh. 61 alleging that despite such protection, the defendants forcibly measured the property and removed the plaintiff's shed and erected fencing. This Court, by order dated 15/05/2025, directed restoration of the position as it existed prior to such act. It is stated that the defendants have preferred an appeal against the said order. However, unless the said order is stayed, it continues to operate. Therefore, the acts of measurement and erection of fencing cannot be viewed in isolation, as they have already been subjected to judicial scrutiny and restoration order has been passed by this Court. In this background, permitting measurement through Court Commissioner at this stage may result in disturbing the position restored by judicial order and may lead to further complications.

15. Coming to the legal position, Order XXVI Rule 9 of the Code of Civil Procedure empowers the Court to appoint a Commissioner for local investigation when such investigation is necessary for the purpose of elucidating any matter in dispute. The words "matter in dispute" are of crucial importance. However, it is important to note that, the provision cannot be used for collecting evidence for a party or for introducing new issues which are not part of the suit. If such course is permitted, it would amount to allowing a party to indirectly expand the scope of the litigation.

16. As discussed above, in the present suit, whether there is encroachment on C.S. No. 1007 or whether the defendants have right of way through C.S. No. 1005 are not directly in issue. The issue is confined to alleged interference with the plaintiff's possession over C.S.

No. 1006. That issue can be adjudicated on the basis of oral and documentary evidence to be led by the parties. If such application is allowed, it would amount to permitting the defendants to indirectly introduce a new controversy relating to C.S. No. 1007, which is beyond the scope of the present suit.

17. Learned Advocate for the defendants has relied upon the judgment in **Manohar Pagrut vs Sunanda Tharkar 2008 (4) ALL MR 718**. In the said case, the suit was filed for removal of encroachment based on a prior measurement conducted at the instance of the plaintiff. During trial, the cadastral surveyor who had carried out the measurement was examined, and in his cross-examination, he made material admissions which created serious doubt regarding the correctness and reliability of the measurement. In view of such discrepancies, the defendants therein sought fresh measurement of the suit property. Though the Trial Court had rejected the application, the Hon'ble High Court allowed the same, holding that in a suit relating to encroachment, it is necessary that both properties are properly measured and the exact boundary line is identified so as to conclusively determine the existence or otherwise of encroachment.

18. However, the present suit is not one for removal of encroachment, it is for perpetual injunction only in respect of C.S. No. 1006. No relief regarding encroachment upon C.S. No. 1007 or fixation of boundary is sought. Further, no such measurement conducted at the instance of the plaintiff is under challenge in the present proceedings. Therefore, the necessity of determining the exact boundary line, as was required in the cited case, does not arise in the present suit. Hence, the observations from the said decision are not helpful to the defendants.

19. Considering the above discussed facts and circumstances of

the case, appointment of Commissioner for measurement of C.S. Nos. 1006 and 1007 is not necessary for deciding the present suit. If the application is allowed it would amount to enlarging the scope of the proceedings beyond the pleadings. Therefore, the present application appears to be not only misconceived but also an abuse of the process of the Court. Hence, I hold that, the application deserves to be rejected. Hence, in answer to point no. 2, I pass the following order.

**ORDER**

The application is rejected with costs

Date : 02.04.2026

**(M.A.Kulkarni)**  
Jt. Civil Judge (Junior Division),  
Kavthe Mahankal.

**CERTIFICATE**

I affirm that the contents of this P.D.F. file  
judgment are same, word to word, as per the original order / judgment.

|                                   |   |                                                    |
|-----------------------------------|---|----------------------------------------------------|
|                                   |   |                                                    |
| Name of the Stenographer          | : | Mrs. J. A. Salunkhe.<br>(Stenographar grade - III) |
| Court                             | : | Jt. C.J.J.D. and J.M.F.C.,<br>Kavathe Mahankal.    |
| Date                              | : | 02.04.2026                                         |
| Order /judgment signed by P.O. on | : | 02.04.2026                                         |
| Order /judgment uploaded on       | : | 04.04.2026                                         |