

Order below Exh.40 in RCS 156/2023
Sunil Hipperkar and 3 Vs Diagamber Hipperkar and 4
(CNRMHNSN08-000681-2023)

The application is for appointment of Court Commission, under Section 75 and Order 26 Rule 9 of the Code of Civil Procedure, 1908 (the CPC).

2 Perused the application, and the record.

3 The application to proceed without say of the defendants. Defendant 1 is proceeded ex-parte vide below Exh.1 Dt.08/11/2023 and defendants 2 to 5 without ws vide order below Exh.1 Dt.08/11/2023.

4 The suit is for removal of encroachment, possession, Mesne Profit, and for a decree of perpetual injunction.

5 Heard.

6 The following points arise for my determination, to which I record my findings together with reasons thereof.

Sr.No	Points for determination	Findings
1	Whether the appointment of Court Commission is necessary for elucidating any fact in the matter in dispute?	Yes
2	What order ?	As per the final order.

Reasons

Point 1

7 It is settled law, that the appointment of Court Commission, has to be allowed, when there is a boundary dispute or a case of encroachment, is pleaded.

8 On prima-facie, perusal of the plaint, it is clear that the plaintiffs have duly complied with the Order 7 Rule 3 of the CPC (Hon'ble the Bombay High Court amendment). The plaintiffs have laid their oral evidence by filing affidavit-in-lieu of examination-in-chief of the plaintiffs' witnesses Nos. 1 and 2 below Exh.29 and 30, respectively. It has been averred, that in the suit property 1A, defendants 1 to 3 have encroached upon towards the southern side, an area admeasuring 0 H 13.31 R of which four boundaries have mentioned. In catena of the judgments, it has been held that the fact of encroachment may be proved by oral evidence of the plaintiffs and the technical assistance i.e., TILR, who is well equipped with the measurement, that can be have on the spot, as fact in issue is the encroachment, for which the measurement by the TILR appears to be necessary. For the above reasons, the application has to be allowed. The same is necessary, for adjudication i.e, elucidating the matter or fact in issue. Costs follows the event. Hence, the following **Order**

The application is allowed.

2 The TILR, Jath is hereby appointed as the Court Commission, to carry out the measurement of the suit property 1A more particularly mentioned in para 1 of the plaint. The Court Commissioner to prepare a report and map setting out the factual position, if any.

3 The Court Commission to submit the report and map within two months from today, following due process of law.

4 The plaintiffs to deposit the requisite fees, documentation etc.,

5 The plaintiffs to produce on record, a copy of the Challan evidencing, the deposit of the measurement fees, under the urgent head/category of measurement, on or before the next date.

Jath
Date:-15/04/2025

(Sanjay P. Bunde)
Jt C.J.J.D, Jath