

IN THE COURT OF Jt.CIVIL JUDGE JUNIOR DIVISION**AT KADEGAON, DIST.SANGLI****Regular Civil Suit No. 91/2015**

Nurmohammad Rajesh Kazi & Ors. Plaintiffs

V/s.

Usman Gani Rajesh Kazi & Ors. Defendants

Order Below Exh.132

1. This is suit for permanent injunction. This application is filed by the plaintiffs under Order 26 Rule 9 of the Code of Civil Procedure and submitted that, in the present suit it is essential to appoint court commissioner to see exact position of suit properties. Hence, prayed to allow the application.

2. Defendants resisted the application and submitted that, the court cannot collect evidence for the party by appointing the Court Commissioner. With this, they prayed to reject the application.

3. Heard both sides. Following point arises for my determination. I have recorded my finding and reasons thereon as under :-

Sr. No.	<u>Points</u>	<u>Finding</u>
1.	Whether the appointment of court commissioner is essential ?	No.
2.	What Order ?	The application is rejected.

REASONS

4. Perused the suit record. It is a case of the plaintiffs that, they are in possession of suit property and defendants have obstructed their

possession. As per order 26 rule 9 of the Code of Civil Procedure the court commissioner can be appointed for the purpose of elucidating the matter in dispute. In the present case the burden lies on plaintiffs to show their possession in suit property. In my opinion it is for the court to determine that, who is in possession of the suit property and that work of court cannot be deputed to the court commissioner. Possession is a fact which can be proved by evidence given by both parties.

5. In the case of Sanjay Namdev Khandre V/s. Sahebrao Kacharu Khandre, it has been held that, the court commissioner cannot be appointed for collecting evidence regarding possession.

6. In present case plaintiffs have filed this application for appointment of court commissioner to see the exact position of the suit properties. As held in above citation the commissioner cannot be appointed for collecting evidence regarding possession. Plaintiffs have to prove their possession over the suit property by giving cogent evidence. The work cannot be delegated to the court commissioner. Hence, I pass the following order.

ORDER

The application is rejected.

Date : 05/04/2023

(P.R.Sabnis)
Jt. Civil Judge, Junior Division.,
Kadegaon.