

RCS No. 114/2023
Ananda Kamble V/s. Vasant Gaikwad
CNR NO.MHSN14000629 2023

ORDER BELOW EXH. 16

This is an application moved by the plaintiffs for appointment of T.I.L.R as Court commissioner under Order 26, Rule 9 of the Code of Civil Procedure [For short “CPC”].

2) It is contention of plaintiffs that, this is a suit for perpetual injunction to restrain the defendant from disturbing peaceful possession over the suit property as well as to restrain him not to oust plaintiffs from suit property. Plaintiffs have come with specific contention that the suit property is their ancestral property and they have cultivated rice crop in it. However, the defendant tried to obstruct their peaceful possession and started to construct shed in the right side of suit property. Defendant in his W.S contended that his shed is not in the suit property. Accordingly, application Ex. 5 of plaintiffs came to be rejected. It is necessary to measure suit property. Concerned officer of TILR office refused to measure suit property on the ground that there is dispute about shed of defendant in suit property. As the defendant is obstructing possession of plaintiffs, plaintiffs have moved this application to appoint Court Commissioner to inspect the suit property, particularly, to bring on record measurement of the suit property and to fix boundaries and to report as to whether alleged shed of defendant is situated in suit property along with its measurements.

3) Defendant has filed say at Exh. 19 and contended that application is given by the plaintiffs to collect evidence. Plaintiffs

have not filed appeal on order on Exh. 5. It is correctly observed by the court about four boundaries and description of suit property. Plaintiffs are trying to measure property of wrong description. Plaintiffs have not come with clean hands. They have to establish their claim on own footing. The entire burden is upon plaintiffs to establish their ownership and possession. Court commissioner can not be appointed to collect evidence. Contention about refusal of TILR to measure suit property is totally false. Plaintiffs are trying to fill up the lacuna's with the help of court commissioner. Reason for which commission is needed is not mentioned in the application. Thus defendant prayed to reject the application.

4) Heard the learned advocates for both the parties at length. The learned advocate for the plaintiffs and defendant argued in the tune of their contentions. Points arise for determination along with findings and reasons thereon are as under :

Sr.No.	<u>Points</u>	<u>Findings</u>
1.	Whether the plaintiffs have made out grounds to appoint a Court commissioner ?	No.
2.	What order ?	The application is rejected.

REASONS

POINT NO.1 :

5) Before embarking upon merits of the application, it would be just and proper to state in brief the nature of the suit. The suit is filed for seeking perpetual injunction against the defendant from disturbing peaceful possession of plaintiffs over the suit property. It is evident from the pleadings that plaintiffs are in

possession of suit property and defendant is trying to obstruct their possession. Thus the material issue for adjudication in the suit is to adjudicate whether plaintiffs are in possession of the suit property.

6) Though the plaintiffs have prayed for measurement by appointing court commissioner, it takes me to material question for adjudication whether in this state of facts, a Court commissioner can be appointed. It is well settled legal position that appointment of Court Commissioner can be made when there is dispute regarding encroachment or boundaries of the immovable property. Admittedly, the present suit is neither for removal of encroachment nor for demarcation of the boundaries. The plaintiffs wish to measure suit property by appointing Court commissioner without claiming relief of fixation of boundaries in the suit. Nothing is filed on record to show that, TILR refuse to measure suit property.

7) A Court commissioner can be appointed only when the Court is satisfied on the basis of material available on record when a party is not able to produce the desired evidence to assist the Court to record finding on an issue for adjudication. In other words, a Court commissioner cannot be appointed to collect the evidence. It is for a party who asserted a claim of possession to satisfy the Court. If the plaintiffs are stating that they are in possession of suit property and defendant is trying to obstruct their possession, they have to prove it on their own footing.

8) To my mind, power of appointment of Court commissioner for inspection cannot be exercised by the Court to assist party to collect evidence where it can get evidence itself. In the

case in hand, the written statement has been filed. Therefore, the disputed question of fact can be adjudicated upon by the Court after recording the evidence of the parties. In such circumstances, assistance of commissioner is neither necessary nor justified. Merely, their application Exh. 5 is rejected can not be a ground to appoint court commissioner.

9) Considering the relief claimed, it is crystal clear that suit is for simplicitor injunction. The entire burden is upon plaintiffs to establish their possession. If the commissioner is appointed, he will show the possession and area which will automatically lead to collection of evidence, which is not permissible. Thus, present application is devoid of merits. Hence, I am of the considered view that plaintiffs have not made out ground to appoint a Court commissioner. In turn, I answer point No.1 in the negative and pass the following order :

ORDER

- 1) The application (Exh.16) is rejected.
- 2) Costs in cause.

Shirala
Date- 25/03/2026

(V. A. Desai)
Civil Judge Junior Division,
Shirala

CERTIFICATE

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

Name of the Stenographer	:	M. S. Gondkar,
Court	:	C.J.J.D. & J.M.F.C., Shirala
Date	:	25/03/2026
Order signed by the		
Presiding Officer on	:	25/03/2026
Order uploaded on	:	27/03/2026