

IN THE COURT OF DISTRICT JUDGE - 03, PANDHARPUR

**Misc. Civil Appeal No. - 45/2024.
Shamrao Dhavare Vs. Shamrao Kolekar.**

ORDER BELOW EXH. 11

01. This is an application filed by appellants under order 26 Rule 9 of CPC for appointment of Court Commissioner for bringing on record factual position of suit property as well as existence of trees and farm pond. The appellant submitted that, respondent by taking disadvantage of the order passed Ld. Trial Court below Exh. 5 are trying to create new road from the suit property. The respondents have suppressed material fact from the Court and they filed application before Tahsildar, Sangola under section 5 of Mamledar Courts Act for open the road which is not in existence. The Tahsildar has not personally visited property and not made site inspection. According to appellant, in the alleged property there are colonies and big trees and farm pond. The appellant wants to bring on record the said factual aspect by appointing Court commissioner. Hence, he prayed that, the Court Commissioner may be appointed and he may be directed as to whether colonies and big trees were existing on the road or not.

02. The respondents filed say at Exh. 13 and resisted application on the ground that, the appellant is not entitled to file application of Court Commissioner at appellate stage. This application is filed for collection of evidence. No cause of action arose for filing of application. Before commencing the hearing on T. I. Application the appellant ought

to have filed application for appointment of Court Commissioner. Lastly the respondents prayed for rejection of application.

03. Heard Adv. Shri. Mahesh Kasabe for appellant and Ld. Adv. V. R. Deshmukh for respondents.

04. By this application appellant prayed that Court Commissioner be appointed for bringing on record factual position of the suit property. The appellant submitted that, colonies and farm pond and big trees were existing in alleged road. The appellant wants to bring on record this factual position by appointing Court Commissioner. At the outset it is to be noted that, this application for appointment for Court Commissioner was presented before appellate Court. The present appeal is filed against impugned order passed on T. I. Application. In my view, scope of Misc. Civil Appeal is very limited one. This application for appointment of Court Commissioner is not maintainable before the appellant Court. Hence, on this ground application liable to be rejected.

05. It is submission of respondent that, the appellant has filed same type of application in RCS No. 29/2024 before Ld. Trial Court. This fact is not denied by the appellant. Appellant has not mentioned in this application that he has preferred the application for appointment of Court Commissioner before Trial Court. He has suppressed the material fact from the Court. It appears that, the appellant has submitted same kind of application before Ld. Trial Court and before appellant Court. He cannot be allowed to invoke two forums simultaneously. He cannot seek

same relief at same time from two different Courts. Hence, application is liable to be rejected.

06. By this application the appellant wants to appoint the Court commissioner for bringing on record the exact status of road. It is settled law that, Court Commissioner can be appointed if there is any boundary dispute or any dispute as regards to the encroachment. In present case, there is no boundary dispute between the parties. So also there is no case made out by the appellant as regards encroachment. In my view, the Court Commissioner cannot be appointed for collection of evidence. By filing this application the appellant wants to collect the evidence. Hence, application is liable to be rejected.

07. As mentioned herein above the suit in question does not contain any boundary dispute or any dispute as regards any encroachment, wherein the report of Court Commissioner will facilitate the Civil Court in arriving at decision. In short the Court commissioner cannot be appointed for collection of evidence. Hence, application is liable to be rejected. Hence, I pass following order.

ORDER

- 1) Application filed by appellant below Exh. 11 is hereby rejected.
- 2) Order accordingly.

Date : 30.04.2026.

(A. S. Salgar)
District Judge-3, Pandharpur

CERTIFICATE

I affirm that, the contents of this PDF file are same word to word as per the original.

01. Name of the Stenographer - Santosh Vilas Ghongade.
02. Name of the Court - Court of Dist. Judge 03,
Pandhapur.
03. Order/judgment signed by P.O. on - 30.04.2026.
04. Order /Judgment uploaded on - 30.04.2026.