

ORDER BELOW EXH. 55 IN SPL.C.S. NO. 38/2017
(CNR NO. : MH5006-003196-2017)
I.A.No. 01/2019

1. This is an application for appointment of Court commissioner.
2. Perused application and say vide Exh.62. Heard both learned advocates. Perused record.
3. It is submitted by the application that the plaintiff is in possession of the suit property and cultivating crops in it. The real state of facts on the spot should be brought on the record by appointing court commissioner. Hence, court commissioner be directed to report regarding crops, boundary between lands, pipeline etc..
4. By say vide Exh.62 application is opposed on the ground that it is for collection of evidence. Hence, it be rejected.
5. This suit is filed for permanent injunction. Therefore, there is no question of an encroachment or identification of lands. The application is not filed to ascertain encroachment or identification of properties. As per the case of the plaintiff itself, they are in possession of the suit property. Therefore, in the suit for simplicitor injunction, the present application is itself unwarranted. On the face of it, the application is for collection of evidence. The plaintiff wants to bring the facts of crops, pipeline, boundary etc.. All these facts are relating to possession of parties. Hence, under Order 26 Rule 9 of C.P.C. commissioner cannot be appointed for collection of evidence. Therefore, on the face of it, the application is not maintainable, being clearly for collection of evidence. Under the guise of bringing

situation at the spot on the record, the evidence cannot be collected in such a manner by appointing court commissioner. Hence, following order is passed.

Order

The application vide Exh. 55 is rejected.

Date: 03.10.2019.

(M.R. Jadhav)
Jt.Civil Judge, Senior Division,
Pandharpur.

CERTIFICATE

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

Name of Stenographer : A.K. Vibhute

*Court : Jt.Civil Judge Senior Division
Pandharpur*

Date : 03.10.2019.

*Order signed by the : 03.10.2019.
Presiding Officer on*

Order uploaded on : 04.10.2019.