

Order below Exh.184 in R.C.S. No.272/2019

1. Defendant No.2 has filed this application for appointment of court commissioner.
2. As per defendant No.2, in this suit for partition, the suit properties described in para Nos.1A to 1C of the plaint are not partitioned. At Exh.70, the court while rejecting the application of defendant No.2 has held that the suit properties are the joint Hindu family properties. The suit properties are in possession of plaintiff and the defendants. The suit properties bear sugarcane crop. The respective possessors of the suit properties have sold the sugarcane crop to the the Vitthal Sahakari Sakhar Karkhana. However, the other parties to the suit are restraining this defendant from selling / transporting the sugarcane crop to the sugar factor. As the suit properties are not partitioned, defendant No.2 vide this application prays for appointment of court commissioner to deposit the Bills in the court vide which the sugarcane crop is sold to the factory from the respective suit properties. Hence, this application.
3. Plaintiff opposes this application by filing a say below the application. It is argued by the advocate appearing for the plaintiff that this application is nothing but an attempt to prolong the matter. Order 26 Rule 9 pertains to appointment of court commissioner for local investigation. But the defendant No.2 has altogether prayed a different cause for appointment of the court commissioner. Hence, on such count, the application is prayed to be rejected.

4. Defendant Nos.1, 3 and 4 also oppose this application by filing the say below the application. The application is opposed on the ground that defendant No.2 on every occasion files one application or another and tries to prolong the matter. Previously also, such application was filed. Court commissioner was appointed for the same purpose as prayed for in this application. But till date, the report of court commissioner is not received. The application is also opposed on the ground that defendant No.2 has not filed any counter claim and therefore, he cannot seek any reliefs as prayed for in this application.

5. Upon perusing the record of this case, it appears that this application is the replica of the application filed by defendant No.2 at Exh.111. The contents of this application, and the prayer made in this application are the same as that of application at Exh.111. My predecessor had allowed the application (Exh.111), and the court commissioner was appointed for the cause prayed for.

6. This is suit for partition. Hence, all the parties to the suit are plaintiffs in this case. Admittedly, the suit property is not yet partitioned. Therefore, it cannot be said that defendant No.2 has no right to file such application without he first filing a counter claim.

7. It is also an admitted position that parties to the suit are in possession of suit properties. Hence, if at all the suit is decreed and possession of the suit properties are ordered to be given to the parties, then issue of mesne profit would definitely arise. In view thereof,

appointment of court commissioner for the purpose as prayed for in this application becomes essential.

8. The role of court commissioner to be appointed under Order 26 Rule 9 is not restricted to only inspection of spot or the property. The said rule envisages appointment of court commissioner for the purpose of ascertaining the market value, or the amount of any mesne profit or damages etc. Thus, the argument of plaintiff cannot be accepted that the court commissioner is to be appointed only for the local inspection.

9. Resultantly, the application is required to be allowed. Hence, I pass the following order.

- A- The application is allowed.
- B- 3 separate court commissioners are appointed for the properties situated at village Khedbhose, at village Shevate, and at village Bhose.
- C- Every of these court commissioner shall remain present at the respective properties when the sugarcane crop is being cut and till it is transported to the Vitthal Sahakari Sakhar Karkhana, Gursalle.
- D- Each of the court commissioner shall obtain Bills from the Vitthal Sahakari Sakhar Karkhana, Gursalle for having purchased the sugarcane crops from the respective owners.
- E- Each of the Court commissioner shall, in his report, state the

amount of sugarcane crop from the respective suit properties of been sold to the sugar factory alongwith the purchase amount and the copies of Bills should be annexed to the report.

- F- An endure shall be made by each commissioner that the transportation of the sugarcane crop from each of the field is not done on the same day. There shall be a time gap of at least 2 days between the transportation of sugarcane crop to the sugar factory from the suit properties situated in each of the village.
- H- Fees of each court commissioner for the said commission is fixed at the rate of Rs.10,000/-.
- I- The entire expenses of the court commissioners are to be paid by defendant No.2. Only after the payment of court commissioners' fees within a period of 10 days from today, the Writ of court commissioner is to be issued.
- J- All the parties shall jointly submit the name of court commissioners to be appointed for the said purpose within a period of 2 days from today, failing which this court shall appoint the court commissioners.

Date : 27.01.2025

Swayam S. Chopda
Jt. C.J.J.D. Pandharpur.

CERTIFICATE

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

Court : Jt. C. J. J. D. Pandharpur.

Name of Stenographer : R.M.Gogi.

Date : 27.01.2025

Judgment/Order signed by
the Presiding Officer on : 27.01.2025

Judgment/Order uploaded on : 27.01.2025