



ORDER BELOW EXH-24 IN R.C.S. NO.102/2024

(Passed on this 14th August, 2025)

01. The plaintiff has filed an application under Order XXVI Rule 9 of Code of Civil Procedure (for short “C.P.C.”). It is the contention of the plaintiff that, the suit property No.326 was partitioned amongst the plaintiff and the defendants in the year 1978 and the defendant No.01 and defendant No.05 have divided Gat No.326/1 as Gat No.326/1A and 326/1B. The plaintiff wants to conduct the measurement of the entire Gat No.326 so as to ascertain the possession of the area which is under occupation of the parties to the suit. According to plaintiff, demarcation and division of the separate shares of the parties is not yet made by conducting any measurement and hence, it is essential to conduct the measurement by appointing Court Commissioner. Learned advocate Shri. Shahabade submitted that, Order XXVI Rule 9 of C.P.C. postulates that, a court commissioner may be appointed in any suit and it is not restricted to any particular type of suits. The measurement conducted from the Court Commissioner shall provide the details of the possession of the parties over any particular area of the Gat No.326 and thereafter, if the encroachment is found then, the parties shall deliver possession accordingly.

02. The defendants filed their reply at Exhibit 26. Learned Advocate Shri. Boralkar submitted that, the Court Commissioner cannot be appointed by the court to collect evidence for the parties. The application is vague in nature and there is no measurement map on record to show that, there was any encroachment over the suit property by any of the defendants. The division of the original Gat number is not yet made. In such situation, there is no need to appoint any Court Commissioner especially when, the suit is for the relief of permanent injunction only. He prayed for rejecting the application.



03. Perused the application, say thereon, pleadings, Issues framed and heard learned advocates for the sides at length. The suit is admittedly for permanent injunction and the plaintiff has claimed his peaceful and continuous possession over the suit property bearing Gat No.326/2 and described in the plaint. According to him, there was interference caused by the defendants over the road adjacent to the boundaries and the said obstruction or interference was made in June 2024. A prayer for permanent injunction for restraining the defendants from causing such obstruction or interference is made. In such situation and after going through the pleadings and documents filed on record, this court has framed issues at Exh.22 and the burden was casted upon the plaintiff to prove his possession over the suit property and about the obstruction and interference caused by the defendants to his peaceful possession. It was thereafter, on 14.07.2025 when an application was moved before this court for conducting measurement of the entire Gat No.326. The plaintiff has not made any contention about any encroachment caused over the suit property by the defendants. The suit property was not even divided and demarcated by filing appropriate application before the office of Land Records. Thus, there are no means, according to the plaintiff, to prove the fact of the particular area of Gat No.326 over which the parties are enjoying their possession.

04. The plaintiff is attempting to collect evidence by appointing Court Commissioner and wants to bring the fact of possession of the parties, including the plaintiff, on record. The scope and purport of Order XXVI Rule 9 of C.P.C. is not for collecting evidence for the parties but, the court in its discretion appoints Court Commissioner for elucidating the facts, in appropriate cases, which cannot be ascertained without visiting the spot. The Court Commissioner cannot be appointed for ascertaining as to which of the parties to the suit are in possession of which portion of the suit property. If



the plaintiff is claiming that, he is in possession of the suit property then, he shall prove it on his own and cannot take assistance from the court.

05. I am guided by the ratio laid down by Hon'ble Bombay High Court in **Pradeep Chhaganlal Panpalia Vs. Ghanshyam Chhaganlal Panpalia in Writ Petition No.132 of 2025, decided on 22.07.2025** wherein it was held that, "*In a suit for permanent injunction, a court commissioner cannot be appointed for the purposes of ascertaining the possession of the parties over the suit property as it would amount to collection of evidence and such an attempt of the parties must fail and the application for appointment of Court Commissioner was rejected*".

06. I am also guided by the ratio laid down by the Hon'ble Bombay High Court in **Raghoji Vs. Gopal reported in 2022 SCC OnLine Bom 6214** wherein it was held that, "*5.The learned trial Judge rejected the application inter alia observing that Court commissioner cannot be appointed for collecting evidence through the machinery of the Court. Certain other observations are made touching the absence of diligence and bona fides, on which no observation is necessary.*

6.Considering that both the suit claim and the counter-claim seek injunction simplicitor, I do not find any error in the view taken by the learned trial judge. It is also difficult to disagree with the observation of the learned trial Judge that commissioner cannot be appointed to collect evidence.

7. If after the evidence is adduced by both the parties, the learned trial Judge is of the view that for elucidation or clarification, Court commissioner is required to be appointed, it is always open and permissible for the learned trial Judge to suo moto invoke the provisions of Order XXVI Rule 9 of the Civil Procedure Code."



07. The facts and circumstances in the present suit show that, the plaintiff has not adduced evidence till date despite, of the fact that, Issues are framed. The Court at appropriate stage and in its discretion, after considering the evidence adduced by the parties may appoint a Court Commissioner suo motto, if any need arises therefor. The plaintiff is attempting to obtain evidence by appointing Court Commissioner and this cannot be allowed in the light of the ratio laid down by Hon'ble Bombay High Court in Pradeep (supra) and Raghoji (supra). The application at Exh.24 is hereby rejected with cost.

Date: 14.08.2025.

(M. M. Kalyankar)
Civil Judge Junior Division,
Akkalkot.



CERTIFICATE

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

Name of the Stenographer : S.P.Doke (Grade-III).
Court : C.J.J.D. and J.M.F.C., Akkalkot.
Date : 14.08.2025.
Judgment / Order signed by P. O. on : 19.08.2025.
Judgment / Order uploaded on : 20.08.2025.