



ORDER BELOW EXH.34 IN R.C.S.No.272 of 2023

(Iliyas Patel and ors.Vs. Bhagaywant Sul and ors.)

(Passed on 16.09.2025)

By way of this application, the plaintiffs seek the appointment of a Court Commissioner for the purpose of joint measurement of Block Nos. 20 and 21/1. The plaintiffs have submitted that the defendants have measured Block No. 20 through the T.I.L.R. Office, Karmala, without adhering to the mandatory procedure prescribed under the Measurement Manual. It is further alleged that the defendants have unlawfully erected poles on the customary pathway, thereby obstructing the plaintiffs' access.

2] The defendants have filed their reply below Exh.36, contending that they have already measured Block No. 20. They have further submitted that the plaintiffs themselves had measured Block No. 21 through the T.I.L.R., Karmala, on 12.10.2018, and had fixed the boundaries accordingly. The defendants state that they have fixed the boundaries of their land on 22.05.2018. At the relevant time of measurement, there was no encroachment. According to them, the plaintiffs did not raise any objection to the said measurement and boundary fixation dated 22.05.2018. Therefore, they have prayed for rejection of the present application.

3] Learned counsel for the plaintiffs, Shri R.V. Diwan, vehemently argued that if a joint measurement is conducted, there would be no inconvenience caused to the other side, and the controversy between the

parties may likely be resolved. He relied upon the judgment of the Hon'ble Apex Court in **E. Achuthan Nair vs. P. Narayanan Nair & Another [1987 (4) SCC 71]**, wherein it was held that even when a plaintiff is uncertain about the precise boundaries, the appointment of a Court Commissioner is justified. In the present matter, the plaintiffs have averred that the defendants have obstructed their customary pathway by erecting poles. However, at this initial stage, without adducing the plaintiffs' evidence, the appointment of a commissioner is not warranted.

4] The plaintiffs have also placed reliance on the judgment of the Hon'ble High Court of Hyderabad in **Sarala Mahaveer Jain vs. Sangu Gangadhar Buchanna**, reported in [2016 SCC Online Hyd 49]. However, the legal principles laid down in the said case are not applicable to the facts of the present case at this stage, as the plaintiffs are seeking the reliefs of declaration and injunction. Furthermore, the plaintiffs have alleged obstruction to their customary way. Hence, without adducing evidence in support of the alleged obstruction, it would not be appropriate to allow the appointment of a Court Commissioner.

5] Learned counsel for the defendants, Shri K.V. Veer, has strongly opposed the application, contending that it is not maintainable at this stage. The plaintiffs have sought reliefs of declaration and injunction. He relied upon the judgment of the Hon'ble Bombay High Court, Bench at Aurangabad, in **Shantaram Dattatray Kekan vs. Bhausahab Karbhari Kekan & Ors.**, reported in [Writ Petition No.14046 of 2021], wherein it was held that there is no hard and fast rule regarding the stage at which a Court Commissioner may be appointed. In some cases, the courts have permitted appointment before the commencement of trial, while in others such appointment has been held erroneous. The decision depends on the

facts of each case. However, a consistent legal principle across these judgments is that a commissioner should not be appointed solely for the purpose of enabling a party to gather evidence. Therefore, the appointment of a commissioner for measurement and fixation of boundaries before the plaintiffs adduce their evidence is not justified. The above authority is squarely applicable to the present case.

6] In the instant case, the plaintiffs specifically seek measurement of the suit property and fixation of boundaries. They have further alleged that the defendants have obstructed their customary pathway by erecting poles. Both parties have claimed to have conducted measurements of their respective blocks through the T.I.L.R. office, Karmala. These issues can be addressed during the trial, without necessitating the appointment of a commissioner at this stage. Since the plaintiffs are yet to lead their evidence, the prayer for appointment of a commissioner is premature. Therefore, considering the nature of the relief sought and the stage of the proceedings, I pass the following order:

ORDER

- 1] The application below Exh.34 is kept in abeyance until completion of the plaintiffs' evidence.
- 2] Both parties to take note.
- 3] The plaintiffs shall adduce their evidence on the next date without fail.

Place : Karmala
Date : 16.09.2025

[S.M.Ghuge]
Civil Judge, Senior Division,
Karmala, Dist.Solapur

CNR NO.MHSO220047502023

CERTIFICATE

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

Name of Stenographer : B.R.Kondekar
Court Name : Civil Court Senior Division, Karmala
Date : 16-09-2025

Order/Judgment signed
by the Presiding Officer on : 16-09-2025

Order uploaded on : 16-09-2025