

MHST070007192026

**ORDER EXH. 18 IN RCS No. 56/2026**

(Bajirao Bhimrao Savlekar Vs. Gramvikas Adhikari + 1)

The plaintiff has filed present application for issuance of commission to measure the suit property, as provided under Order XXVI Rule 9 of CPC.

2. Perused the application, reply Exh. 20, pleadings, documents and the record. Heard the Ld. advocate Shri. R.D. Kadam for the plaintiff and the Ld. advocate Shri. A. S. Kale for the defendants.

3. The plaintiff has made the submission that in the suit property 1B there is a construction along with latrine and cattle shed. The premises is well equipped with water and electric connection. He has grocery shop therein. To bring the real facts on record and to assist to resolve the dispute amongst the parties inspection of the suit property with report is essential. Hence, this application.

4. The defendants have strongly opposed the contents of the application. They have contended that the plaintiff is trying to collect the evidence in support of his pleading made in the

plaint. Mere for collection of evidence commission can not be issue. The plaintiff is bound to prove the facts pleaded of its own. He can not take assistance of court commission to prove those facts. The plaintiff has made encroachment on the Grampanchayat property. They have initiated legal action to remove such encroachment. To distract such legal action the present application has been moved. The plaintiff has no ownership in respect of survey no. 251/1/1. The application is not tenable in the eyes of law. Hence, prayed for rejection of application. In the hearing, the advocate for the defendants have relied on the citation 2001 (1) All M.R 653. However, no copy of the same is placed on record. Thereby, I am unable to consider the ratio laid down therein.

5. The plaintiff has sought the relief of issuance of court commission to bring the real facts on record which is existed on the spot i.e the suit property. In the plaint the plaintiff has pleaded that he own and possess the suit property consisting the construction, latrine and cattle shed. The defendants have issued notice by claiming the encroachment over the Grampanchayat property and taken the steps for removal of such alleged encroachment. To restrained the defendants from disturbing his peaceful possession, under the guise of encroachment, the plaintiff has sought the relief of mandatory and permanent injunction. The defendants have raised the dispute as to the absolute ownership of the suit property and made the defence of encroachment. Thereby, they have specifically contested the suit.

6. Considering such rival pleadings on record, the issue as to the encroachment is involved in the suit. The defendants have contended that the plaintiff is trying to collect the evidence by taking assistance of the provision as to issuance of commission. On such plea they have relied upon the above mentioned authority of 2001(1) All M.R 653. The facts existed in the suit and the facts before the Honorable Bombay High Court were materially distinguished. Therein, in the simpliciter injunction suit commission was proposed. Herein, mere a simpliciter injunction is not involved. Beside the simpliciter injunction, the plea as to the encroachment is also involved. Even in the reply Exh. 20 at paragraph no. 4, the defendants have admitted the existence of issue of encroachment. Further, in the defence Exh. 13 read with Exh. 22, the defendants have raised the plea as to the encroachment. Where the encroachment is involved in any suit, such encroachment can not be ascertained mere on the basis of oral submissions. It need technical assistance in the form of measurement and so on. Considering such rival contentions and the encroachment being a contesting issue, the issuance of commission for measurement is essential. Such issuance of commission would not be a mere collection of evidence. Rather, it will assist the Court to form a conclusion with definite evidence of the expert. The application, to resolve the dispute amongst the parties, deserves to be allowed. Hence, I pass following order.

ORDER

1. Application is Exh. 18 allowed.
2. Dy.S.L.R., Karad is hereby directed to carry the measurement of the suit properties i.e Survey no. 251/1/1 and old Grampanchayat property no. 1131(new Grampanchayat property no. 405/1) area 38 x 53 including RCC construction of 12 x 42 and first floor construction 12 x 42 and submit factual report with measurement map by disclosing the actual portion of encroachment if any, at the earliest preferably within a month.
3. The plaintiff is directed to pay the all incidental expenses of requisite fees for such measurement. He shall provide all necessary documents for such measurement as directed by the court commissioner time to time.
4. The defendants are also directed that they shall co-operate the court commissioner for supplying necessary documents essential for carry out the measurement which is in their control, if so required.
5. Writ be issued accordingly.
6. Application is disposed of accordingly.

Karad
Date : 04.08.2026

(Sudhir M. Bomidwar)
Jt. Civil Judge, Jr. Division, Karad.