

REG. CIVIL SUIT NO. 26/2018.

Suresh Tarade : Plaintiff

Vs.

Suresh Tarade : Defendants

ORDER BELOW EXH. 64

(PASSED ON 02.01.2026)

This is an application filed by plaintiff for appointment of Court Commissioner as per Order 26 Rule 9 of the C.P. C.

02. It is contention of plaintiff that, the property mentioned in Para 1 and 2 of the present application are owned by plaintiff and defendant respectively. But, defendants are opposing the plaintiff to construct the house in the property mentioned in Para 1 of the present application as said property is common property. Therefore, plaintiff has filed present suit for declaration and perpetual injunction restraining the defendants not to obstruct him.

03. It is further contention of plaintiff that he has filed his lieu of examination-in-chief. At the time of taking information and collecting documents regarding suit, he came to know that it is necessary to measure both lands mentioned in Para 1 and 2 of the present application, through TILR, Medha. Hence, by filling present application plaintiff prayed to appoint Taluka Inspector of Land Records (T.I.L.R) as Court Commissioner.

04. Defendants filed their say and resisted the application. It is the contended by the defendants that plaintiff has prayed for measuring suit property 1A. Said prayer is not maintainable in the eyes of law. It is further contended that the reason mentioned for

appointment of Court commission is not just, proper and reasonable. Therefore, defendants prayed to reject the application.

05. On the basis of contentions of the plaintiff and defendants following points arose for the determination of this application.

Sr. No.	Points	Findings.
1.	Whether a Taluka Inspector of Land Records (T.I.L.R) is required to be appointed as a Court Commissioner, as prayed in this application. ?	Negative
2.	What order ?	Rejected

REASONS

AS TO POINT NO. 1.

06. I carefully perused the record. It appears that the plaintiff has filed present suit for declaration and permanent injunction. The prayer of plaintiff is to declared him as a owner of suit property and also permanently restraint the defendants not to obstruct him. It is not the case of plaintiff that defendants encroached on suit property. Even it is not the case of plaintiff that to recover the encroached portion of the suit property.

07. Plaintiff specifically mentioned the four boundaries and area of suit property in the plaint, in such situation why plaintiff wants to measured the suit property is not clearly mentioned in the application. In the present application at paragraph no.06 plaintiff merely contended that:-

सदर वादीकडुन दावा मिळकतीबाबत माहिती व कागदपत्रे घेताना दोघांचे मिळकतीची मोजणी करणे गरजेचे आहे ही बाब लक्षात आली अशा परिस्थितीत वादी व प्रतिवादी यांचे दोघांचे मिळकतीची मोजणी होवुन दाव्याचे स्वरुपा पाहता सदर मिळकतीबाबत वस्तुस्थिती ही मे. कोर्टासमोर येणे गरजेचे आहे.

08. It is true that court commissioner can very well be appointed for local investigation to elucidating the matter in dispute vide order 26 rule 9 of C.P.C. However, for this purpose the nature of suit and requirement needs to be considered. Present suit is filed for declaration and permanent injunction and not filed for recovery of portion of land in the possession of the defendants.

09. I have place reliance on the judgment given by the *Hon'ble Bombay High Court* in case of **Syed Mustak Ahemad Vs. Ashique Ali Khan** reported in 2011 (6) MH. L.J. 334 and **Pandurang Nandalal Chandak Vs. Sandeep Mukundrao Pensalwar** reported in 2009(2) MH.L.J. 487 it was held that, “*a Court Commissioner cannot be appointed to collect evidence*”. In the present case, in view of the above discussion, it is clear that this is an attempt to collect the evidence on the part of plaintiff. Therefore in the light of ratio of *Hon'ble Bombay High Court* in case of **Syed Mustak and Pandurang Chandak**, I am of the view that this is not the fit case where Court Commissioner can be appointed. In the result, I answer point no. 1, in negative.

AS TO POINT NO. 2

10. In view of my findings to point no. 1, it is clear that, this

application is not tenable in the eyes of law as prayed. Therefore, in answer to point no. 2, I pass the following order.

ORDER

Application (Exh. 64) stands rejected.

Place : Medha
Date : 02.01.2026

(Dr. Vikram A. Avhad)
Civil Judge Jr. Dn., Medha