

MHST130003422012 	RCS No. 141/2012 Ganesh Kadam Vs Madan Kadam & others
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ORDER BELOW EXH. 106

This is an application filed by the counterclaimant under Order XXVI Rule 9 of the Code of Civil Procedure for the appointment of a Court Commissioner / Taluka Inspector of Land Records, Patan, for fresh measurement and fixation of boundaries of the suit properties bearing City Survey No. 129, City Survey No. 130 and City Survey No. 131.

02. The applicant has contended that earlier a Court Commissioner was appointed and a report was submitted; however, the said report contains errors and therefore a fresh commission is necessary. It is further contended that after the city survey proceedings, the old gat numbers are no longer in existence and only city survey numbers are relevant. According to the applicant, if the three properties are measured together on the basis of city survey records, the actual length, breadth and boundaries will become clear and the dispute will be resolved. It is therefore prayed that the Taluka Inspector of Land Records, Patan, be appointed as expert commissioner and that both parties be directed to bear the commission expenses.

03. Defendant No. 1 has filed a reply supporting the application and has stated that he has no objection if the application is allowed and the commissioner is appointed.

04. The original plaintiff has opposed the application, contending that the reasons stated in the application are false and baseless. It is submitted that the alleged city survey incorporation, as stated by the applicant, has not taken place in the manner claimed. It is further contended that a prior commission has already been conducted in the suit property, that the Commissioner has filed a report at Exh. 65, and that the applicant has filed the present application only to delay the proceedings. Hence, rejection of the application is prayed for.

05. Considering the contention of all party following points arise for my consideration, and I have given my findings thereon as follows:

Sr.No.	Issues	Findings
1	Whether the applicant has made out a case for the appointment of a fresh Court Commissioner under Order XXVI Rule 9 CPC?	<u>Negative</u>
2	What order?	<u>As per the final order.</u>

REASONS

As to Point No. 1 and 2:-

06. On perusal of the record, it is clear that earlier this Court had already appointed a Court Commissioner in respect of the suit

property. The Commissioner has inspected the property and submitted his report at Exh. 65. The record further shows that the report was prepared after measurement and that a statement was also filed along with the report. The original plaintiff has specifically contended that the said commission work was carried out in the presence of the parties and according to the possession/user shown by them. This circumstance assumes significance because once a commission has already been executed and the report is on record, a fresh commission cannot be ordered as a matter of course.

07. Order XXVI Rule 9 CPC is intended to assist the Court where local investigation becomes necessary for proper elucidation of any matter in dispute. However, the appointment of a fresh commissioner is not warranted merely because one party is dissatisfied with the earlier report. There must be a clear necessity shown for a further local investigation. In the present case, the applicant has mainly relied upon alleged discrepancies in the earlier measurement and upon the fact that city survey numbers now exist. But the applicant has not demonstrated any such special circumstance on the basis of the record so as to displace the earlier commission work already carried out.

08. The very relief sought by the applicant is substantially the same as the relief already obtained through the earlier commission. If a fresh commission is ordered again, it would amount to repeating the same exercise without sufficient legal necessity. The original plaintiff has also pointed out that the application is filed only to prolong the litigation. On the facts of the present case, this contention appears to

have substance, because the suit is at the stage of evidence and the earlier commission report is already available on record.

09. It is also important that the earlier commissioner has already prepared a measurement and has placed a report before this Court. If the applicant has any grievance against the said report, the proper course is to challenge the report in accordance with the law during the trial and to seek appropriate clarification through evidence, rather than seeking a fresh commission without adequate grounds. The power under Order XXVI Rule 9 CPC should be used to aid adjudication and not to multiply proceedings unnecessarily.

10. In view of the above, I am of the considered opinion that the applicant has failed to establish any sufficient or convincing ground for the appointment of a fresh commissioner. Therefore, Point No. 1 is answered in the negative.

11. For the reasons stated above, the present application does not deserve to be allowed. The earlier commission report is already available on record, and no necessity for a fresh local investigation is made out. Hence, the application is liable to be rejected. In view of that, I answered point no. 2 accordingly

ORDER

The application for the Court Commissioner is rejected.

Date:-21/04/2026

(Rajesh M. Lolge)
Civil Judge Jr. Division, Patan