

MHST130008822020 	R.C. S. No. 100/2020 Shankar Patil & Others Vs Rajaram Patil & Others
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: Order Below Exh. 26 :

1. The defendants have applied for the appointment of Court Commissioner under Order XXVI Rule 9 of The Code of Civil Procedure, 1908.
2. It is contended in the application that the present suit is filed for a perpetual injunction against the defendants. The suit property i.e. property no.1-A more particularly described in plaint. In order to resolve the dispute, the measurement of the said property is necessary. Hence, to decide on a suit on merit, it is necessary to appoint a court commissioner. With this submission, they prayed to allow the application.
3. The plaintiff filed their say and they have no objection to this application.
4. The following points arise for my determination, and I have recorded my findings thereon with the reasons as follows:

Sr. No.	Points	Findings
1.	Is it requisite and proper to appoint a Court commissioner?	...In the Negative.
2.	What order?	...The application is rejected.

: REASONS :

As To Point No.1 :

5. Perused the application. Heard learned advocate for the defendants and went through the record. Learned advocate for the defendants raised all the grounds as mentioned by them in their

written statement. Record *prima-facie* shows that there is a dispute between the parties in respect of the possession of the suit property, and there is no boundary dispute. Mere contention in present application is not sufficient to constitute the boundary dispute. In the present suit, there is no dispute about the identification of lands, when a Court should order a local investigation under Order 26, Rule 9 of the Code of Civil Procedure. In the present suit, the issues for determination have not framed yet. In present suit evidence of the party is yet to be started. Therefore, present application seems to be premature. Apart from that the plaintiff has the burden to prove his possession of the suit land. Indeed, a Court Commissioner cannot be appointed to collect evidence for the parties. In the present case, if the Court Commissioner is appointed, it will amount to a collection of the evidence about possession before framing of issues. On the contrary, the appointment of a Court Commissioner will not curtail the area of dispute and it will cause to prolong the matter unnecessarily. Therefore, I answer point No. 1 in the negative.

As To Point No.2 :

6. As stated earlier, the appointment of a Court Commissioner is not requisite and not proper for the purpose of elucidating matters in dispute between the parties. Therefore, in answer to point No. 2, I pass the following order.

: ORDER :

The application is rejected.

Patan.
Date : 07/11/2025

(R. M. Lolge)
Civil Judge, Junior Division,
Patan.