

MHST130007442015 	R.C.S. No. 155/2015 Maruti Pandurang Mane Vs Tukaram Pandurang Mane etc. 1
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ORDER BELOW EXH.45

The present application at Exhibit-45 is filed by the plaintiff under Order XXVI Rule 9 of the Code of Civil Procedure seeking appointment of a Court Commissioner for measurement of the suit property, fixation of boundaries and submission of a report regarding the alleged encroachment by the defendants.

2. The plaintiff contends that the defendants have encroached upon a portion of the suit property from the eastern side and are causing obstruction to his possession and enjoyment thereof. The defendants have opposed the application and contended that the plaintiff has no valid title over the suit property and that the measurement sought by the plaintiff cannot be undertaken as the suit property is situated within the Gaothan area, where no survey records are available.

3. The record reveals that the plaintiff had earlier filed a similar application at Exhibit-39. The said application was allowed, and a commission was issued to the Taluka Inspector of Land Records, Patan. However, the Taluka Inspector of Land Records reported that the suit property is situated within Gaothan limits and that the requisite survey records and maps are not available, due to which measurement could not be undertaken.

4. However, it is pertinent to note that the defendants themselves have specifically contended that the property situated on the eastern side of the suit property belongs to them and that the said property is covered by City Survey records. The allegation of the plaintiff is that encroachment has been made on the side of the defendants' property. Therefore, the dispute substantially relates to the common boundary between the suit property and the adjoining property of the defendants.

5. At this stage, it is not concerned with the determination of title. However, where the dispute relates to the identification of the property, the location of the common boundary and the alleged encroachment, a local investigation may assist the Court in elucidating the matter in controversy. Measurement and inspection of the suit property as well as the adjoining property of the defendants with reference to available records and existing physical features may facilitate proper adjudication of the dispute.

6. Considering all, I am of the view that a fresh local investigation is necessary. However, before appointing a suitable Court Commissioner, it would be appropriate to afford an opportunity to both parties to suggest the name of a competent and independent person possessing technical expertise in the field of survey and measurement. Hence, the following order.

ORDER

1. The application is partly allowed.

2. It is held that local investigation is necessary for elucidating the matter in dispute, particularly regarding the identification of the common boundary between the suit property and the adjoining property of the defendants and the allegation of encroachment.
3. Both parties shall, on or before the next date, submit names of one or more independent and competent persons possessing technical qualifications and experience in survey, measurement, mapping, or land records work, who may be considered for appointment as Court Commissioner.
4. After considering the suggestions of both parties, it shall appoint a suitable Court Commissioner and determine his remuneration and other terms.
5. Upon appointment, the Court Commissioner shall issue prior notice to both parties regarding the date and time of inspection.
6. The parties shall remain present at the spot and shall extend full cooperation to the Court Commissioner.
7. The Court Commissioner shall inspect the suit property as well as the adjoining property of the defendants and shall take into consideration available City Survey records, revenue records, title documents, property extracts, maps, boundary marks and existing physical features available on the spot.
8. The Court Commissioner shall identify, to the extent possible, the common boundary between the properties of the parties

and shall prepare a sketch/map showing existing structures, boundary features and the relative position of the properties.

9. The Court Commissioner shall not adjudicate upon the title, ownership or legal rights of either party and shall confine his report to factual observations, measurements, physical features and available records.
10. The Court Commissioner shall submit a detailed report along with field notes, measurements, photographs, if any, and a sketch/map within two months from the date of appointment.

Date:- 09/06/2026

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