

MHST130011442019 	RCS 124/2019 Dashrath Keshav Gaikwad Vs Jagannath Kondiba Gaikwadi others
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**ORDER BELOW EXH 62**

This application has been filed by the plaintiff under Order XXVI Rule 9 of the Code of Civil Procedure, 1908, seeking the appointment of a Court Commissioner for the purpose of measuring the suit property and demarcating its boundaries.

2. The plaintiff's case is that they have filed the present suit against the defendant for a permanent and perpetual injunction to restrain the defendant from interfering with their peaceful possession and enjoyment of the suit property, which is described in detail in paragraph 1 of the plaint. The plaintiff asserts that the suit property, bearing survey number 82/34, is their ancestral property, and they are in actual possession of it. They allege that the defendant, despite having no connection with the property, is attempting to encroach upon it by cutting grass, felling trees, and digging, causing irreparable loss to the plaintiff. To ascertain the exact boundaries and area of the suit property, and to determine if any encroachment has occurred by the defendant in survey number 82/31, the plaintiff contends that it is essential to appoint a skilled commissioner, specifically the Taluka Inspector of Land Records, Patan, to measure the property and prepare a spot panchnama and a sketch map. Such a measurement, they argue, will reveal the true factual position to the Court and facilitate the administration of justice.

The plaintiff has expressed their readiness to pay the commissioner's fees and process.

3. The defendant has strongly opposed the application, contending that it is false and misleading. They deny all the allegations made by the plaintiff regarding interference with possession, cutting of grass, felling of trees, and causing harassment. The defendant disputes the necessity and legality of appointing a commissioner for measurement. They highlight that the plaintiff had previously filed similar applications for injunctions (Exh. 5 and Exh. 19), both of which were rejected by the Court on June 2, 2021. The appeal against this rejection, Civil Appeal No. 57/2021, was also dismissed by the District Court on February 4, 2022. Furthermore, the defendant points out that the plaintiff had filed a similar application for the appointment of a Court Commissioner at Exh. 46, which was rejected by the Court on April 12, 2022. The defendant also states that applications at Exh. 48 for maintaining the status quo and Exh. 49 for an injunction were voluntarily not pressed by the plaintiff. The defendant alleges that the plaintiff is deliberately filing multiple applications to harass them and waste the valuable time of the Court, suppressing material facts, and attempting to collect false evidence. They assert that their old house was dilapidated, and they were granted a 'Ramai Gharkul' (housing scheme) by the Patan Panchayat Samiti, which they have constructed and have been residing in for about two years under property number 162. The defendant states that the plaintiff's suit property, survey number 82/34, with an area of 0.2 R, is a residential plot where 10-12 plaintiffs collectively have houses, and therefore, no measurement is required. They submit that the application is a misuse of the court process and will lead to multiplicity of proceedings, urging the Court to reject it.

4. Upon perusal of the records, it is evident that the plaintiff's suit is primarily for a perpetual injunction. The plaintiff claims ancestral ownership and possession of survey number 82/34, admeasuring 0.2 R, with specific boundaries. They allege that the defendant is illegally entering their property, causing damage, and attempting to dispossess them. The plaintiff had previously sought interim injunctions which were rejected and upheld in appeal. Crucially, a similar application for the appointment of a Court Commissioner (Exh. 46) was also rejected by this Court, and another similar application (Exh. 61) was withdrawn by the plaintiff.

5. The legal position regarding the appointment of a Court Commissioner under Order XXVI Rule 9 of the Code of Civil Procedure, 1908, is well-established. This provision empowers the Court to issue a commission for local investigation for the purpose of elucidating any matter in dispute, particularly for ascertaining facts which cannot be conveniently ascertained by the Court through oral evidence. The discretion to appoint a commissioner is to be exercised judiciously and not as a matter of course.

6. The Supreme Court in **Haryana Waqf Board v. Shanti Sarup and Others, (2008) 8 SCC 671**, emphasized that in a suit for perpetual injunction, where the main dispute pertains to possession and the boundaries are disputed, the Court should ordinarily order a local investigation by appointing a Commissioner. The Court observed that if the parties are not clear about the exact description of the property or its boundaries, or if there is a dispute regarding encroachment, a local investigation becomes essential to enable the court to come to a correct conclusion. Similarly, in **Pralhad and Others v. Laduba Mahadeorao**

**Katkar, 2015 (3) Mh.L.J. 598**, the Bombay High Court reiterated that in cases involving boundary disputes or alleged encroachments, a local investigation by a commissioner, especially a technical expert like a Talathi or Cadastral Surveyor, can be highly beneficial in ascertaining the factual position on the ground.

7. However, it is equally important to consider the context of the present case. While a court commissioner can certainly be appointed in a suit for perpetual injunction, particularly when there is a boundary dispute or alleged encroachment that requires a technical measurement, the Court must also ensure that such an appointment is not merely a fishing expedition or an attempt to circumvent previous orders of the Court. In the present case, the plaintiff has repeatedly sought similar reliefs, and their previous applications for interim injunctions and for the appointment of a commissioner have been rejected or withdrawn. The defendant has clearly stated that their property is a residential plot where they are residing, and a previous attempt to restrain their construction was also rejected by the courts. The core of the plaintiff's suit is to seek a permanent injunction against interference with their possession. While the exact demarcation of boundaries might be relevant, the repeated nature of these applications and the history of rejected similar requests raise concerns about the bona fides of the current application. The Court has already adjudicated on interim reliefs and a previous commissioner application. Allowing this application now, without a substantial change in circumstances or a clear demonstration of how this investigation will fundamentally alter the existing legal position, could lead to unnecessary delays and multiplicity of proceedings. The Court needs to ascertain the actual physical possession, which may not always require a fresh survey if other evidence suffices or

if the primary dispute is not solely about an exact boundary line. The previous rejection of a similar application at Exh. 46 is a significant factor to consider.

8. In light of the entire record, including the previous rejections of similar applications and the defendant's contention that the plaintiff is merely trying to harass them, the Court finds that the present application for the appointment of a Court Commissioner is not warranted at this stage. The plaintiff has had ample opportunities to clarify the boundaries, and the repeated nature of these applications, despite previous rejections, suggests a lack of new compelling reasons for such an appointment. The Court can assess the issue of possession and alleged interference based on the evidence already available or to be adduced during the trial.

**ORDER**

The application at Exh. 62 is hereby rejected.

Date. 25/07/2025

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