

R.C.S. No.31/2015
Mukhtarkhan ..vs.. Subhani

ORDER BELOW EXHIBIT No.

(Passed on 05/11/2015)

The defendant has filed the present application under Order 26 Rule 9 of C.P.C seeking the appointment of Commissioner. The defendant submitted that he possesses the suit property and has sown soyabean and other crops. On the contrary, the plaintiff is misleading the Court as to the boundaries of the suit property and intends to grab the defendant's property under the guise of present suit. Hence, he filed the present application to ascertain the crops standing in the suit property and also its boundaries.

2] The plaintiff strongly objected the application submitting that the defendant intends to collect the evidence under the garb of appointment of Court Commissioner. The application being as to collect the evidence, the same is liable to be rejected. Hence, prayed to reject the application.

3] I perused the application, say and record. The plaintiff has specifically come with a case that he is the exclusive owner and possessor of the suit property. He filed the sale-deed and 7/12 extract on record which prima facie establish plaintiff's claim. On the contrary, the defendant has no any document to rebut plaintiff's contention. On the other hand, he seeks the appointment of Commissioner to establish his contention. In other words, he intends to collect the evidence under the garb of appointment of Commissioner which cannot be the object of the order 26 rule 9 of C.P.C. The plaintiff has relied upon the judgment of Hon'ble Parent High Court, Bench at Aurangabad reported in **2011 Bom.C.R.167 Nalubai Shinde ..vs.. Gopinath Shinde** wherein the Hon'ble High Court observed that Commissioner cannot be appointed to find out as to who is in possession of the property. Hence, in view of judgment cited supra I found the application not tenable and liable to be rejected. Hence, pass the following order.

ORDER

The application stands rejected.

Sd/-
(A.R.Sayyed)
Joint Civil Judge, (J.D.)
Malegaon, Dist. Washim.

Date: 05/11/2015.

CERTIFICATE

I affirm that the contents of this P.D.F file Judgment/Order are same word to word, as per the original order.

Name of the Stenographer	:	B.A.Ukey, Stenographer (L.G.)
Name of Court	:	Joint Civil Judge, [Jr.Divn.] & Judicial Magistrate, First Class, Malegaon, Dist. Washim.
Date:	:	05/11/2015.
Order signed by the Presiding Officer on	:	05/11/2015.
Order uploaded on	:	05/11/2015.