

MHYA130013662021



ORDER BELOW EXHIBIT 24

(Passed on this 25th day of September, 2025)

This is an application by the plaintiffs seeking appointment of court commissioner for measurement as per Order XXVI Rule 9 of the Code of Civil Procedure, 1908.

2. Perused the application and detailed say of defendant No.1 filed on the overleaf of the application. Suit is proceeded ex-parte against defendant No.2.

3. It is submitted on behalf of the plaintiffs that, plaintiff Nos. 1 to 3 are owner and possessor of the land survey No. 282/1 Adm. 1 H. 20 R. situated at Lakhrayji, Tq. Digras Dist.Yavatmal. (Hereinafter referred to as suit land). Defendant Nos. 1 and 2 are adjacent to the suit land. The land of the defendant No. 1 i.e. Gat No. 287 and The land of the defendant No. 2 i.e. Gat No. 282 are situated at West side of the suit land. On 23/06/2020 the plaintiffs have measured suit land through the Court Commissioner Digras, and found 0 H. 21 R. encroachment over the suit land. In the present matter defendants have denied that they have made incroachment over the suit property.

4. It is further submitted on behalf of the plaintiffs that, in order to bring real facts before this court and also in order to adjudicate the claim of the plaintiffs properly it is necessary to appoint a Court Commissioner for measurement of the suit property. Hence, prayed for allowing the present application.

5. Per contra, it is submitted on behalf of the defendant No. 1 that the present application is made on false and fabricated facts. The plaintiffs should prove the alleged fact of encroachment by giving cogent evidence. The plaintiffs by filing the present application are trying to collect evidence by taking the assistance of the court. Hence, the appointment of Court Commissioner is not tenable at this stage and the present application liable to be rejected.

6. So far as the appointment of Court Commissioner is concerned, in this respect **Order XXVI, Rule-9 of the Code of Civil Procedure, 1908** is relevant. It provides for appointment of commission for local investigation for the purpose of elucidating any matter in dispute, or ascertaining the market value of any property etc. In relation to this legal provision, the following legal propositions have laid down, in catena of decisions by Hon'ble Apex Court and Hon'ble Bombay High Court.

A) Provisions relating to Commission to make local investigation are directory in nature. Only when the trial Court finds a local investigation necessary for the purpose of deciding the matter in dispute, it may exercise the discretion for appointment of Court Commissioner. When

the Court does not find it necessary, there is nothing which mandates the Court to appoint Court Commissioner.

- B) The Court Commissioner cannot be appointed to find out as to who is in possession of the suit field and/or suit premises.
- C) The Court Commissioner cannot be appointed for collecting evidence.
- D) It is always desirable to appoint court commissioner whenever there is dispute of demarcation of the disputed land or to determine whether there is encroachment or in cases of boundary dispute and dispute in relation to identity of lands.

7. In view of the above legal propositions, it is necessary to see whether this application for appointment of Court Commissioner is made for collecting evidence or whether local inspection is necessary for the purpose of elucidating the matter in dispute or deciding the matter in dispute.

8. The learned advocate for the defendants submitted that, on 06/05/2023 application of appointment of court Commissioner at Exh. 18 was rejected by this Court. Therefore, present application is not maintainable. On the contrary Ld. Adv. For the plaintiffs submitted that application below 18 was rejected on the ground that plaintiffs have no land in the Gat No. 282. Thereafter plaintiffs have amended the plaint that they have land in the Gat No. 282/1 instead of Gat No.282. Hence, prayed to allow the application.

9. I have perused the record carefully. It discloses that this suit is filed for recovery of encroached land. It further appears that in the application of Court Commissioner at Exh.18 the plaintiffs have prayed to appoint Court Commissioner to measure land in Gat No.282. Thereafter plaintiffs have amended the suit and through this application claiming appointment of Court Commissioner to measure Gat No. 282/1. However, it is to be noted that perusal of 7/12 extracts of Gat No. 282/1, it reveals that name of the plaintiffs appears in occupant column of the suit land. Therefore, the submission of the defendants that this application is not tenable cannot be accepted.

10. It is settled principal of law that, dispute regarding boundaries it is always desirable to get the suit land measured by an expert to find out the area of the suit land encroached upon and for best adjudicated.

11. It is pertinent to note here that the dispute between the parties is relating to the boundary. Further, it appears that there is dispute of demarcation of the disputed land or to determine whether there is encroachment or not. The plaintiff has specifically mentioned this application that defendants made encroachment over the suit land. Thus, considering the aforesaid facts, the documents and nature of suit would merely create a disputed picture and the Court would need a virtual report. Moreover, the oral evidence of the parties to the suit will not be conclusive to prove the encroachment, if any or to identify the location of the boundaries between the properties of the plaintiffs

and the defendants. Therefore, the facts of encroachment or the existence of any boundaries cannot be brought on record unless the suit land is measured. Thus, the appointment of Taluka Inspector of Land Records is necessary to elucidate the matter in dispute. Therefore, the joint measurement of suit land of plaintiffs and defendants is necessary and it will not amount to collection of evidence.

12. In view of above discussions, I found substance in the application. Thus, present application deserves to be allowed. Hence, I pass following order :-

ORDER

1. The application is allowed.
2. The Taluka Inspector of Land Records, Digras is hereby appointed as Court Commissioner.
3. The Court Commissioner is directed to carry out joint measurement of suit land bearing Gat No. 282/1 and Gat Nos. 282 and 287 situated at Village Lakhrayji, Tal. Digras, Dist. Yavatmal.
4. The Court Commissioner is directed to carry out joint measurement after giving in writing notice to both the parties regarding day and time of his visit for commission work to the suit land and asking

them to remain present at the time of commission work at the suit land.

5. The Court Commissioner is directed to submit his detailed report and map within three months from the date of receipt of commission writ.
6. The plaintiffs are directed to deposit the necessary fees of measurement in the office of Land Records and file an affidavit about its compliance.
7. Issue commission letter along with all the necessary documents accordingly to the Court Commissioner.

Place: Digras.

Date: 25/09/2025

(B. N. Godbole)
Civil Judge, Junior Division,
Digras.