

MHAU020057882024



RCS No. 1036/2024
Vijay Chaudhary Vs.
Collector

Order passed below Exh. 25

1. This is application filed by plaintiffs for appointment of Court Commissioner to know if City Survey No. 151, Municipality No. 16029 has been acquired by defendants or not. It is further contended that the defendants have not brought any record to show that if they have acquired the lands of the plaintiffs. To ascertain that, Court Commissioner is required to be appointed. Therefore, plaintiffs prayed for granting said application.

2. In the said case, inspite of ample opportunity to defendants, they did not file any reply to the said application. Therefore, the application filed by the plaintiffs is decided on merit without say of the defendants.

3. Gone through the record and contentions of the parties. The advocate of the plaintiffs relied on ***Pandit Landage Vs. Vishnu Pawar and Anr. dated 30.04.2025***, in which Hon'ble Bombay High Court held that application for appointment of Court Commissioner can be decided by the Court to elucidate the matter in controversy. The term elucidation of the matter in controversy cannot be equated to "Elucidation of the evidence

adduced by the parties". To lay down a cast iron rule that the Court Commissioner cannot be appointed before the parties have adduced evidence would be, in effect, disabling the Court from getting assistance it requires for the determination of the controversy between the parties. The said case is relating to stage of moving of application of appointment of Court Commissioner. Therefore, the stage of filing application by the plaintiff is proper one, with, the due respect of Hon'ble Bombay High Court said citation is not applicable to case in hand because it is in respect of under what circumstances, Court Commissioner is appointed. Hence, the said case is not helpful to the plaintiffs.

4. In regard to contention of plaintiff, plaintiffs have filed some documents. The plaintiffs have filed on record copy of property card in respect of City Survey No.16029/1, sheet No. 138, measuring 2354 Sq.mtrs, situated at Sambhajinagar. The said copy of property card shows that as per entry dated 05.10.2001 and panchanama, the Shivram Yadav has become possessor of the 418 sq. mtrs. The said copy of property card bears date 18.07.2025 and it is downloaded on the same date. However, the said property card does not show the names of other plaintiff No.1. Except above documents plaintiffs have not filed any other documents to show that they are in possession of the entire suit property. The plaintiffs have not filed any document to show that how they have become owner of CTS No. 16029, Gut no.50, sheet No. 151 and since when they have been in possession of the suit property.

5. The plea of the plaintiffs further show that as there is no certainty about if the said property has been acquired by the defendants, appointment of Court Commissioner is required. The defendants are

trying to dispossess the plaintiffs. However, plaintiffs have not filed any documentary record issued by the defendants showing dispossession of the plaintiffs. From the suit property. Mere contention of plaintiff that the defendants are trying to dispossess to them is not sufficient. The application filed by the plaintiffs to ascertain if defendants have acquired suit property or not is indirectly in respect of the collection of the evidence which is not permitted as per law. Though, plaintiffs have filed on record copy of property card, it is in respect of 418 sq. mtrs. and it shows that name of plaintiff No.2. However, the suit is filed in respect of 2354 sq. mtrs.. So also there is no record about possession of the plaintiff No.1 over the said suit property. Hence, in such circumstances, the application filed by the plaintiffs cannot be said to be legal and proper to appoint Court Commissioner. So, it is liable to be rejected. Hence, following is passed.

ORDER

1. The application for appointment of Court Commissioner is rejected.
2. No order as to costs.

Date: 15.09.2025
Aurangabad.

(A. S. Chonde)
06th Jt. Civil Judge S.D. A'bad.