

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 3729 of 2026**

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DINKARRAI GHELABHAI PATEL

Versus

MUKESH DHIRUBHAI DESAI & ANR.

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Appearance:

MR APURVA R KAPADIA(5012) for the Petitioner(s) No. 1

MR DEEPAK P SANCHELA(2696) for the Respondent(s) No. 2

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CORAM:**HONOURABLE MR. JUSTICE DEVAN M. DESAI****Date : 17/03/2026****ORAL ORDER**

1. Heard learned advocate Mr. Apurva R. Kapadia for the petitioner and learned advocate Mr. Haribhai Patel for learned advocate Mr. Deepak P. Sanchela who appears on advance copy, for the respondent No.2.

2. Learned advocate for the petitioner has submitted that plaintiff-respondent No.1 filed a suit for removal of encroachment on the public road. In the suit, an application for appointment of Court Commissioner came to be filed which was allowed by the learned trial Court. It is further submitted that considering the nature of suit, the purpose of commission is just to collect the evidence. The provisions of Section 26 Rule 9 of

the Code of Civil Procedure, 1908 is not applicable considering the controversy found in the suit. However, learned trial Court has allowed the application.

3. Having considered the submissions made by learned advocates for the parties as well as considering the averments made in the application, the issuer requires consideration. Hence, Rule.

4. Learned advocate Mr. Haribhai Patel for learned advocate Mr. Deepak P. Sanchela waives service notice of Rule for respondent No.2.

5. In the meantime, the order dated 02.03.2026 passed by learned 4th Additional Senior Civil judge below Exhibit-5 in Regular Civil Suit No.123 of 2025 is stayed.

Direct Service, as sought for, is permitted.

RINKU MALI

(D. M. DESAI,J)