

MHAH050006982021**ORDER BELOW EXH.16 IN****R.C.S. NO.213/2021****Ramesh Sitaram Murkute Vs. Ambadas Sukhdev
Murkute**

This is plaintiff's application for appointing the surveyor of Land Records Office, as Court Commissioner, for ascertainment of the boundaries of suit-properties in dispute and for its fixation. The application is strongly objected by defendants, submitting for the survey of the properties in dispute. Heard Ld. Advocates for the plaintiff and defendants.

02. Plaintiff's suit against defendants is for the survey of suit-properties and for fixing its boundaries, to ascertain the alleged encroachment and that, for its possession. Plaintiff alleges that suit Gut no. 63, Admg. 42 Ares, have been partitioned between him and defendants and they both have sought share of 14 Ares each in the suit Gut number, having north-south boundary between them. Plaintiff alleges that in year 2021, during the cultivation of suit Gut no. 63, to extent of their share, for kharip season, deft nos. 01 to 04, have destroyed the existing boundary between suit-property 1A and 1B, and have encroached on plaintiff's suit-property 1B. For fixation of the boundaries of the disputed gut numbers and that for ascertainment of alleged encroachment, plaintiff intends to survey the properties and have accordingly moved the Office of Land Records. For want of consent from defendants, the Office have shown their inability to survey the suit-properties in dispute. Further, defendants are reluctant

to give the consent for survey of the disputed properties compelling plaintiff to move the Court with the suit, wherein he has moved present application for appointing the Court-Commissioner for surveying the suit-properties towards ascertainment of its boundaries and its fixation for ascertaining alleged encroachment.

03. Defendants in their say(Exh.90) have though, contended that the application is not legally tenable, they submit that the survey of the disputed suit-properties should be done along with its boundaries, which include, suit Gut no. 02, Ghumandeo-Kamlapur road, Kamlapur road and Gut no. 62. Survey of suit Gut no. 63, would not be fruitful in absence of survey of its boundaries. Defendants submit for the survey of suit Gut no. 63, along with its boundaries and same would be fruitful for asserting its boundaries and that for the alleged encroachment.

04. In view of the pleading on record and the averments made in the application with say, both plaintiff and defendants are having dispute regarding the boundaries of their portion of lands, possessed by them in suit Gut no. 63. As dispute is regarding the area of portion of land respectively possessed by plaintiff and defendants, same being the fact in issue for adjudication of the suit, it requires to be elucidated as per the provision under Or. 26, Rule 9, of the Code of Civil Procedure.

05. Considering the nature of suit, surveying of suit-properties in dispute would be fruitful for proper and meritorious adjudication of the suit. The survey of the suit-properties through the Office of Land Records, being fruitful for the adjudication of the suit, in interest of

justice, I pass following order:-

ORDER

01. Application is allowed.
02. The Dpty. Superintendent of Land Records, Shrirampur, is hereby appointed as Court Commissioner.
03. He is directed to survey the suit-property 1A and 1B from suit Gut no. 63, in view of the pleading of plaintiff and deft nos. 01 to 04, in their respective plaint and written-statement, along with present application and say.
04. Prior to execution of Commission work, the Commissioner to issue notice to interested parties.
05. While surveying the suit-properties the Commissioner to ascertain the boundaries of the disputed properties and fix the same and ascertain the alleged encroachment, if any.
06. After payment of commission charges by the parties, Court Commissioner to comply with its commission work, and file its report within one month from the date of payment.
07. Both plaintiff and defendants are directed to bear expenses of the survey of their respective portion of land

standing in their possession in suit Gut no. 63, and that of the survey of suit Gut no. 63, along with its boundaries.

08. To be more specific, both plaintiff and defendants to bear equal charges of the Commission work.
09. Writ to be issued accordingly. Same to be accompanied with the copy of plaint (Exh.1), written-statement (Exh.14), application(Exh.16), say(Exh.19)
10. As the commission work is fruitful for adjudication of the suit, no order as to costs.

(Vinay B. Kamble)
Jt. Civil Judge Sr. Division,
Shrirampur.

Date: 18/04/2024