

ORDER BELOW EXH.8 IN RCS No.470/2017.

The plaintiff has filed application for carrying out measurement of the suit property. It is contended by the plaintiff that, he has filed the suit for declaration, perpetual injunction, measurement of the suit property and fixing boundaries of the suit property. The suit property is situated next to Pune-Nashik highway. The suit property 1-A is purchased by the plaintiff. Defendant Nos.1 to 4 are having their possession over three different area situated in Gat No.78/1. The plaintiff has constructed house and cattle shed in the suit property 1-A by spending huge amount. Defendant No.1 is having 100 feet barren land in his possession. Defendant No.1 showed plaintiffs land to the authorities at the time of survey of land for widening of the highway. The suit property is not acquired in the widening of the high way still it is shown in the map. Hence, the plaintiff has prayed that, suit property 1-A and 1-B be measured through Court Commissioner to find out area of 0.02 R is acquired or not and whether property of plaintiff or defendant Nos. 1 to 4 is acquired. It is also required to fix the boundaries of the suit property and file detailed map of the suit property.

2. Perused the say of defendant Nos.1 to 4. They denied all contentions of the plaintiff made in the application. They further submit that, the plaintiff is not concerned in any way with the suit property. They further submit that, already 0.02.50 R is acquired by the highway authority. The plaintiff is not entitled to conduct measurement of the property which is already acquired by the highway authority. If the application of the plaintiff is allowed it will cause irreparable loss to defendant Nos.1 to 4 which cannot be compensated in terms of maney.

Hence, defendant Nos.1 to 4 prayed to reject the application.

3. Heard learned counsel for both the parties. The learned counsel for the plaintiff relied on the case of *E. ACHUTHAN NAIR VS. P NARAYANAN NAIR AND ANOTHER 1987 STPL 4326 SC* it is held by the Honorable Supreme Court that, whenever there is a dispute between two parties as regards the location of a boundary separating their neighbouring properties and if on a demand to co-operate in fixing that boundary it is not given, a suit will lie at the instance of the demanding party. He further relied on the case of *TAJMULHUSSAIN MULLA MUMTAZ HUSSAIN VS. SATISH BHANUDAS CHAVAN 1994 Mh.L.J. 666* it is held by the Honorable High Court that, plaintiff's application for appointment of Commissioner to measure the land rejected as also application for review - revision under Section 115 of the Code of Civil Procedure challenging said order maintainable - appointment of Commissioner ordered. He further relied on *MALHAR S/o GANPAT BOKERPHOD AND OTHERS VS. SHIVAJI S/o VISHWANATH PAWAL 2014 Mh.L.J. 237* it is held by the Honorable High Court that, appointment of Court Commissioner is the discretion of the Court - in case of boundary disputes or dispute about the identity land would should order local investigation - by taking assistance of experts, disputes regarding boundaries can be best adjudicated. He also relied on the case of *BHUPENDRA S/o. BHAGWAT TURKAR VS. HOMRAJ S/o. ZITUJI MESHRAM* it is held by Honorable High Court that, it is always desirable to get suit land or field measured by an expert or competent public official to find out the area of the suit land encroached upon.

Ratios laid down in above discussed cases are applicable to the extent of appointment of Court Commissioner for measurement of disputed property.

4. Perused the record and documents produced on record by both the parties to the suit. The plaintiff has filed 7/12 extract and Grampanchayat extract of the suit property. He has also filed Sale Deed of the suit property which clearly shows that, area ad measuring 0.25 R out of Gat No.78 is sold to the plaintiff leaving aside 100 feet area from eastern side of the suit property. I have gone through the photos and map filed by the plaintiff. The suit is for declaration which is dependent on the report of Court Commissioner. Allowing this application will not cause any prejudice or irreparable loss to the plaintiff rather it will help in just decision of the suit. Hence, for the just decision of the suit and to whether the suit property 1-A or 1-B is acquired by the Highway authority it is necessary to fix the boundaries of the suit property through the T.I.L.R. Sangamner. Hence, in the interest of justice the application needs to be allowed. In the result, I pass following order In the result, I pass following order :-

ORDER

1. The application is allowed.
2. The T.I.L.R. Sangamner is appointed as a Court Commissioner, he is directed to fix boundaries of the suit property and area acquired by the Highway Authority if, any out of the suit property 1-A and 1-B.
3. The plaintiff is directed to deposit necessary commission fees in the office of T.I.L.R. Sangamner.
4. The T.I.L.R. Sangamner shall file the commission report within one month of this order.

5. Issue letter to T.I.L.R. Sangamner.

Date: 19/12/2018.

(P. I. Mokashi)
2nd Joint Civil Judge Senior Division,
Sangamner.