

ORDER BELOW EXH. 30 IN R.C.S. NO. 79/2013.

1] Today matter is not on board. However, the learned counsel for the original plaintiff has filed pursis that he has no objection to pass an order today on the present application. Hence, this application is taken up for order on today's board.

2] Present application is made by the defendant No. 9, who is the plaintiff in counter claim filed by him at Exh. 29. It is contended that the present suit is instituted by the plaintiff for partition in respect of old survey No. 10/1 having new block No.39, admeasuring 02 Acre and 13 R.+ 1 R. kharaba, old survey No.10/3 having new block No.35, admeasuring 01 Acre and 3 R. along with well and old survey No.60/2 having new block No.169, admeasuring 02 Acre and 1 R. along with well and house property, situated within the area of village council Astagaon, Tal. Rahata, Dist. Ahmednagar. The original plaintiff has encroached upon the lands mentioned in the counter claim and obtained illegal possession their on. He has no documents pertaining to the said lands. The original plaintiff is also not member of the family of this defendant.

3] It is alleged by defendant No. 9 (the plaintiff in counter claim) that all the lands are ancestral properties of this defendant (the plaintiff in counter claim). However, in order to grab all the lands, the plaintiff has encroached upon the lands mentioned in the counter claim.

4] Partition of the properties is already effected in the year 1930. In view of order of the Collector dated 25/09/1974, the properties cannot be transferred or sub-divided. Therefore, this suit is not maintainable. The original plaintiff has made encroachment on the lands. Hence, it is necessary to measure all the area and to

prepare map by showing encroachment if any along with police aid. The original plaintiff is not law abiding person. There is a possibility of happening of untoward event at the hands of original plaintiff. Therefore, the plaintiff in counter claim urged for measurement of the lands mentioned in counter claim.

5] The original plaintiff has filed his say on 19/10/2015 and resisted the contentions made in the application. He denied the encroachment as alleged by the defendant No. 9 (the plaintiff in counter claim). Defendant No. 9 has made the present application on the basis of false information. Already he has instituted suit bearing R.C.S. No. 387/2004 (old R.C.S.No. 340/2001) for partition. Also the information and evidence in applications bearing No. 40/2014, 41/2014 and 42/2014 made for succession certificate are contrary to the prayer made vide this application. On these grounds, the original plaintiff prayed for rejection of present application.

6] Heard both sides.

7] As per the contentions in the application, the original plaintiff has encroached upon ancestral lands of defendant No. 9 (the plaintiff in counter claim) though he has no concerned at all with the said lands. Even though the original plaintiff is not a member of family of this defendant. Also the properties are already partitioned in the year 1930. However, in order to grab the lands, the original plaintiff has encroached upon the same without having any right or title.

8] In reference to the allegations made by the plaintiff in counter claim, on perusal of 7/12 extract of block No. 35, 39 and 169, it reveals that name of father of defendant No. 9 with other land holders is appearing. Defendant No. 9 has filed certain documents

pertaining to the lands mentioned in counter claim. The 7/12 extract of the lands showing the names of forefather of defendant No. 9. Considering the allegations of encroachment, it deems necessary to appoint the Court Commissioner in order to bring real situation on record of this court. Hence, in view of Order XXVI Rule 9 of Civil Procedure Code, it deems a local investigation to be requisite and proper for the purpose of elucidating the matter in dispute between the parties.

9] Thus, Dy. Superintendent of Land Record needs to be appointed as a Commissioner with direction to measure the suit lands mentioned in counter claim to ascertain four boundaries of the same by giving exact position. Thus, the following order :-

ORDER

- a) Application is allowed.
- b) Deputy Superintendent of Land Record, Rahata is hereby appointed as Court Commissioner.
- c) He shall measure the lands i.e. old survey No. 10/1 having new block No.39, admeasuring 02 Acre and 13 R. + 1 R. kharaba, old survey No.10/3 having new block No.35, admeasuring 01 Acre and 3 R. along with well and old survey No.60/2 having new block No.169, admeasuring 02 Acre and 1 R. along with well and house property, situated within the area of village council Astagaon, Tal. Rahata, Dist. Ahmednagar along with the lands of land holders of the four boundaries of the above properties by giving exact position and ascertaining four boundaries of the said lands.
- d) The commissioner shall follow the procedure of measurement as prescribed by rules, strictly.
- e) Deputy Superintendent of Land Record or Superintendent of land record and all higher level officers, should make available requisite public record and or certified copies there of for execution of commission.

- f) The Commissioner shall submit his detailed report along with map by showing encroachment if any and fixation of boundaries, to this Court within two months.
- g) Defendant No. 9 (the plaintiff in counter claim) is directed to deposit necessary expenses of measurement in the office of the Deputy Superintendent of Land Record, Rahata forthwith.
- h) The Court Commissioner is at liberty to take police aid if necessary considering the situation at the spot while carrying out measurement as above. In that condition, defendant No. 9 shall bear charges of police aid.
- I) Issue writ accordingly.

Rahata.
Date :- 16/04/2016.

(V . V. Khulape)
2nd Jt. Civil Judge, J. D., Rahata.