

CNR NO. MHAH-20-001399-2018.
ORDER PASSED BELOW EXH.8 IN REG.C.S. NO. 340/2018..

Shankar Katkar Vs. Trimbak Thorat + 16.

This is an application filed by the plaintiff seeking appointment of Court Commissioner under Order 26, Rule 9 of the Code of Civil Procedure (in short "C.P.C.") to measure the suit land.

2. The plaintiff has filed the present suit for measurement, fixation of boundary marks and recovery of encroached portion against the defendants. The plaintiff is the owner and possessor of land Gat No. 60 area 1 H, 70 R situated at village Malegaon, Tal. Pathardi, Dist. Ahmednagar. The defendants are the adjacent land holders of the suit property. There is south-north common bandh towards East and West of the suit property between the lands of plaintiff and defendant No.1 to 9. Defendant No. 1 to 9 are trying to break the said common bandh for encroachment over the suit property. When the plaintiff asked about the same and requested to make it as it is but, defendants denied to do the same. Hence, plaintiff measured the suit land by private surveyor and accordingly, he came to know that, defendant No. 1 to 9 have encroached upon the suit property to the extent of 15 to 20 R area. Hence, the plaintiff has filed this suit along with this application for measurement through appointment of T.I.L.R. If the application is not allowed plaintiff will suffer irreparable loss. Hence, prayed to allow the application.

3. In spite of repeated issuance of suit summons as well as by publication, the defendants have not appeared in the suit hence, suit is proceeded ex-parte against the defendants. There is no Say on the application by defendants. Hence, application is proceeded further without Say of defendants.

4. Heard Learned Advocate for the plaintiff. Considering the rival contentions of plaintiff, following points arise for my consideration. I record my findings thereon for the reasons mentioned below.

<u>No.</u>	<u>Points</u>	<u>Findings</u>
1.	Whether the appointment of Court Commissioner is necessary for the purpose of elucidating the matter in the dispute ?	.. Yes
2	What order ?	..Application is allowed.

REASONS..

5. Perused the record. I have gone through the pleadings and record. For answering the question in the application it is necessary to see what is the position of law for appointment of commissioner for local investigation ;

Order 26 Rule 9 Code of civil procedure reads as under -

“ Commission to make local investigations:- In any suit in which the court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market value of any property, or the amount of any meson profits or damages or annual net profits, the court may issue a commission to such person as it think fit directing him to make such investigation and to report thereon to the Court.”

6. In the present suit the pleading of the plaintiff is that, defendant No. 1 to & 6 have encroached on the area of plaintiff. When plaintiff requested for giving possession back, they denied to do the same. Therefore, the plaintiff has to file the present suit along with this application for measurement. ...3/-

7. It is observed in many of the rulings of the Hon'ble Bombay High Court that, for finding out the encroachment it is better to measure the lands in dispute. It is even further observed that, without measuring the land the encroachment cannot be correctly ascertained. At this stage, I agree with this submission and allow the application. However, the plaintiff has to satisfy during inquiry that, the report submitted by the commissioner and measurement and the encroachment shown in that map is accurate. Hence, I answer Point No.1 in affirmative and in answer to Point No. 2, I pass the following order.

O R D E R..

The application Exh.8 is allowed as follows -

1. The T.I.L.R., Pathardi is hereby appointed as a Court Commissioner to measure land Gat No. 60, as mentioned in the plaint, which is situated in village Malegaon, Tal. Pathardi, Dist. Ahmednagar. He shall measure the said land and demarcate the boundaries of the plaintiff's properties, as described in plaint.
2. The Commissioner shall submit detail report of the measurement showing demarcated boundaries of the aforesaid person. The encroachment, if any on land of the plaintiff, be shown in the map.
3. The Commissioner shall serve notice to all the sides before conducting the measurement and submit the report, as early as possible.
4. The plaintiff shall pay the expenses of Court Commission within one month from this order in the T.I.L.R. Office Pathardi and file the necessary documents for issuing writ to T.I.L.R. Pathardi.

Sd/- x x x
(A.S. Birajdar)
Civil Judge, (J.D.),
Pathardi.

Dated : 06/04/2022.