

ORDER BELOW EXH. 59
(Prakash Vs. Sandip & Ors.)

The plaintiff has filed this application under Order XXVI, Rule 09 of the Code of Civil Procedure, 1908 (for short C.P.C.) for appointment of Deputy Superintendent of Land Record, Jamkhed as a Court Commissioner for measurement of suit field.

2. Perused the application and say filed by the defendant Nos. 2, 3, 5 to 7 vide Exh. 63.

3. Heard Shri. R. E. Kale, learned advocate for the plaintiff, Shri. H. T. Kashid, learned advocate for the defendant Nos. 2, 3, 5 to 7 and Shri. H. N. Doke, learned advocate for the defendant No. 1 & 4 .

4. It is submitted on behalf of plaintiff that, to resolve the dispute between the parties, it is necessary to measure the suit field through Deputy Superintendent of Land Record, Jamkhed. Accordingly, learned Adv. Shri. Kale prayed to allow the application.

5. Per-contra the defendant Nos. 2, 3, 5, 6 & 7 are resisted the application by contending that, all partitioned shares of original Gat No. 1507 have not been mentioned in suit and all those shareholders who are in possession over it are not arrayed as parties in suit. There are many residential houses of persons in said Gat number. Therefore, it is not possible to make the measurement of suit field. The plaintiff is trying to collect the evidence through this Court. Accordingly, the defendants prayed to reject the application.

6. The defendant No. 1 & 4 by filing pursis (Exh. 64) admitted the say filed by the defendant Nos. 2, 3, 5, 6 & 7 and submitted for rejection of application.

7. It appears that, the plaintiff filed suit for removal of encroached portion of land over the suit properties and also sought

mandatory injunction for not to make construction by making encroachment. The plaintiff wants to make the demarcation of exact location of suit field situated in Gat No. 1507. It is contention of plaintiff that, the defendants are trying to make encroachment over the suit field. The original Gat No. 1507 is divided into sub Gat numbers. In such circumstances, it would be just and proper to measure the suit field along with all the adjacent Gat numbers in order to make the demarcation of exact location of suit field.

8. Furthermore, considering the factual matrix of matter and nature of suit for elucidating the matter in dispute, I am of the view that, it would be just and proper to appoint the Deputy Superintendent of Land Record, Jamkhed as a Court Commissioner for measurement of suit field. Hence, following order is passed.

Order

1. Application (Exh.59) is allowed.
2. Deputy Superintendent of Land Record, Jamkhed is appointed as a Court Commissioner to measure the suit field described in clause-1 of plaint, including the field of plaintiff and all neighbour co-sharers, after giving in writing notices to all of them regarding the day, date and time of his commission work to the suit field and asking them to remain present at the time of commission work at the suit field.
3. The plaintiff is directed to appear before the Court Commissioner accordingly.
4. The Court Commissioner is directed to measure the suit field and submit his report thereof on or before **29.01.2024**.
5. The plaintiff is directed to deposit the requisite fees of Court Commissioner in the office of Deputy Superintendent of Land Record, Jamkhed.

6. Issue commission letter accordingly to the Court Commissioner.

Date: 28/11/2023

Sd/-
(Rajnikant S.Jagtap)
Jt.Civil Judge Junior Division,
Jamkhed.