

**ORDER BELOW EXH.5**  
**(Passed on 10-02-2022)**

1. By way of this application, plaintiffs are praying for appointment of Court Commissioner as per Order 26 Rule 9 of the Code of Civil Procedure for measurement of the suit property.

2. It is contended that, plaintiffs are the owners of Survey No.43/2/A admeasuring 4.78 H.R. of Mouze Patewadi, Tal. Karjat, District Ahmednagar. In the year 1988 on the basis of application of Keru Ganpat Takale, his name was recorded on 8 Anna portion and the names of plaintiffs on 2 Anna each came to be recorded in the revenue records as per Mutation Entry No.2645. Keru Sold land admeasuring 0.81 R out of Survey No. 43/2/B to Dashrath Virkar who then sold the same to defendant no.1 and 2 on 6-6-2000. Accordingly, names of defendants no.1 and 2 are recorded as per mutation entry no.3231. Survey No. 43/2B is situated on the eastern side of Survey no. 43/2A and is recorded in the names of defendants no.1 and 2 and Survey No. 43/1 situated on the southern side of Survey No. 43/2A and is recorded in the name of defendants no.3 to 9. Plaintiffs are in cultivating possession of Survey No.43/2A, but defendants are trying to make encroachment over the same. Plaintiffs tried to get the land measured, but defendants refused to give consent and continued making encroachment. Hence, plaintiffs have prayed for appointment of TILR as court commissioner for measurement.

3. Defendants No.1, 2, 8 and 9 resisted the application by filing written statement cum reply at Exh.34. It is contended that, the old survey number of survey no.43 was survey no.87. Survey No.87 was owned by Babaji Takale. Babaji had two sons namely Ganpat and

Maruti. In the year 1917, there was partition amongst Ganpat and Maruti in which Ganpat received Survey No. 87/1 admeasuring 12 Acre 6 Gunthe and Maruti received Survey No.87/2 admeasuring 12 Acre 7 Gunthe vide mutation entry No.42 dated 13-12-1917. As per the said partition, Maruti, the grandfather of defendants no.8 and 9 were in possession of Survey No.87/2. He mortgaged the property with Shankar Nana Sonar and after paying the mortgage money get the property released in his favour on 06-02-1943. Taking disadvantage of illiteracy of Maruti, Keru, the grandfather of plaintiffs, behind the back of Maruti and without taking his consent recorded wrong entries in consolidation scheme. The entry in Form No.12 and Mutation Entry No.330 were taken without following proper procedure. Hence, defendants have challenged the said entries before Divisional Commissioner, Nashik. Keru Ganpat Takale has sold 0.81 R (2 Acre 1 Guntha) land out of Survey No.87/1 and as such now 3.25 HR (8 Acre 5 Gunthe) land is available with plaintiffs. However, taking disadvantage of the wrong entry in the revenue records, plaintiffs are trying to establish ownership over 4.78 H.R. land by applying for measurement of property. Hence, defendants have prayed for rejection of the application.

4            Heard learned advocates for both the parties. Perused the record.

5.            The suit is for permanent injunction to restrain the defendants from causing obstruction to the possession of plaintiffs over the suit properties. Defendants have come with the case that, there was mistake in consolidation scheme in respect of old Survey No.87. Though contesting defendants have pleaded about partition amongst Ganpat and Maruti in the year 1917 and wrong entries in

consolidation scheme, it is worth to mention here that, except the application filed by them to the Divisional Commissioner for correction of the scheme, no document is filed by them to establish their contentions. The documents filed by plaintiffs show that, they are in possession of Gat No.43/2A admeasuring 4.78 H.R. There appears dispute about the boundary marks between the parties. Learned advocate for plaintiffs has argued that, whenever there is a dispute about the boundaries of the property, it becomes necessary to have a map properly showing the same. In support of his contentions, he placed reliance on following Judgments -

- a) Kashinath Chindhuji Shastri Vs. Haribhau Nathuji bawanthade reported in 2004(2) Mh.L.J. 722,
- b) Girish Vasanttrao Bhoyar Vs. Nimbaji Warluji Bambal reported in 2009(4) Mh.L.J. 371,
- c) Habibkhan Inauttalakhan & Ors. Vs. Waman Govind Rathod reported in 2012(1) ALL MR 803,
- d) Ramzan Sheikh Chand Sheikh Vs. Panjab Nathuji Gawande reported in 2014(6) Mh.L.J.97,
- e) Meenadevi Vasdev Vatnani Vs. Narmadabai @ Leelabai Gopaldas Zanwar reported in 2015(6) ALL MR 25, and
- f) Vasanttrao Digambarrao Nalkande Vs. Raghunath Deolal Nalkande reported in 2016(5) ALL MR 349.

6. I have gone through all the Judgments cited by the learned advocate for plaintiffs. Hon'ble Bombay High Court in all the matters was pleased to observe that, whenever there is a dispute about dimensions and boundaries of the disputed properties, it is necessary to appoint court commissioner for measurement of the same.

7. In the instant case too, the dispute appears to be about

boundaries of the properties. After measuring and demarcation of internal boundaries, the actual location of all the properties can be ascertained. There is no other way than to have measurement and demarcation of internal boundaries of the property.

8. It is well settled that, the Court Commissioner can be appointed for elucidating the real controversy between the parties. The map filed on record shows that Survey No.43 is in one piece. However, revenue records show that, the said property is sub-divided into several parts. Therefore, in order to ascertain location of the properties of the parties, which is the real controversy between the parties, it is necessary to have measurement and demarcation of internal boundaries of the entire survey number. In the facts and circumstances of present case, I am of the view that, it is necessary to appoint court commissioner for elucidating the controversy between the parties. Hence, the following order :-

### **ORDER**

1. Application Exh.5 is allowed.
2. TILR, Karjat is appointed for measurement of property having survey No.43 of Mouze Patewadi, Tal.Karjat, District Ahmednagar showing the boundaries of plaintiffs and defendants by clearly showing the boundaries and the area of all sub-divisions.
3. The Court Commissioner shall measure the lands by taking all the necessary steps required for measurement.

4. Charges of measurement shall be borne by the plaintiff and he shall deposit the same directly to the office of TILR, Karjat within 15 days from today.
5. The Court Commissioner to measure the land and submit his report within one month from the date of receipt of measurement charges.
6. All the parties to co-operate the Court Commissioner. The parties are also directed to supply the relevant documents as required by the Court Commissioner.
7. Issue writ to the Court Commissioner accordingly.

Date : 10-02-2022.  
Karjat.

(M.M.Palsapure)  
Jt.Civil Judge, Jr. Dn. Karjat.