

ORDER BELOW EXH. 28 IN R.C.S.No. 70/2019

1. Present application has been placed on behalf of plaintiffs for appointment of court commission for re-measurement of the suit property through *Nimtandar*. Defendants no.1 to 3 have resisted the application by filing their say. Perused the application and say. Heard, Ld. advocates appearing for the both the parties. Through present suit, plaintiffs have sought the removal of encroachment alleged to have made by the defendants over the suit property. From the record of present suit, it appears that in pursuance of order passed below Exh. 5, measurement of the suit property was directed to be undertaken through court commissioner. From the record of the suit, it also appears that in compliance of order passed below Exh.5, Deputy Superintendent of land Record, Shrigonda has submitted his report at Exh.26 along with measurement map. Being dissatisfied from the measurement map tendered on record, plaintiffs have placed this application for re-measurement of suit property through *Nimtandar*.

2. While showing the dissatisfaction towards the measurement map submit on record and thereby pointing out irregularities in said map, Ld. advocate appearing on behalf of plaintiff has submitted that the measurement map submitted on record is defective as well as vague. It is further submission on behalf of plaintiffs that as it is not shown in measurement map as to whether or not the defendants no. 1 to 3 have made encroachment over the suit property, proper compliance of order passed below Exh. 5 has not been made by the court commissioner. Having regards to the necessity of measurement of the suit property, the order of appointment of court commissioner for internal and joint

measurement of suit land, for the purpose of ascertaining encroachment, if any, over the suit property, has been passed. Now, the question arises as to whether the proper compliance of order passed on application at Exh.5 has been made by court commissioner. Question also arises as to whether map prepared by the court commissioner can be discarded and disbelieved before proving its accuracy. It is contention of the plaintiff that the measurement map as submitted on record is vague as well as ambiguous as it is not shown in measurement map as to whether or not the defendants no. 1 to 3 have made encroachment over the suit property. On perusal of order passed on application at Exh. 5, it appears that vide said order, encroached area was directed to be specified in measurement map separately, only if encroachment is revealed. In light of order passed on application at Exh.5, it can be said that detection of encroachment was condition precedent for referring the encroached portion in said measurement map. Therefore, unless the encroachment is revealed to be made by the defendants, same cannot be expected to be shown in the measurement map. Though it is assumed that measurement map submitted on record does not give clear picture about encroachment over the suit property, said ambiguity would be clarified and removed only on examination of cadastral surveyor who has undertaken the measurement of the suit property. Thus, parties have to firstly proceed to examine the cadastral surveyor as per the mandate of II part of section 83 of Indian Evidence Act. After examination of cadastral surveyor, if any irregularity or improper compliance of order passed below Exh.5 is revealed out, the question pertains to re-measurement or *nimtana* measurement of the suit property would be considered. Without examination of cadastral surveyor, neither the map produce on record

can be disbelieved or discarded nor re-measurement of the suit property can be directed. Considering above facts and circumstance, I pass following order :-

:: ORDER ::

Application at Exh. 28 stands rejected.

Shrigonda.
Date :- 23/11/2023.

Sd/xxx
(**H. J. Pathan**)
3rd Civil Judge (S.D.),
Shrigonda.