

ORDER BELOW EXH. 5 IN R.C.S.NO. 101/2016

1. The present application moved by the plaintiffs for appointment of court commissioner to measure the suit property and fix the boundries of the suit property.

2. The plaintiffs alleged that suit property 1(A) belongs to the plaintiffs which came in his hand by the partition. The plaintiffs further alleged that suit properties 1(B) and 1(C) are the properties purchased by the plaintiff No.1 and plaintiff No.2 respectively. The property of defendant No.1 is in between properties described in the plaint para No.1(A) and 1(B). The rough sketch of the shares of the plaintiffs and defendant No.1 is produced along with plaint. Thus, plaintiffs further alleged that the defendants are trying to make encroachment over the suit properties. There is a boundry dispute between the parties. The defendant No.1 denied to give consent for joint measurement and hence plaintiffs constrained to file present suit and present application for appointment of Court Commissioner.

3. The learned Advocate for defendants Shri. Pathan submitted that he has no objection to measure the suit property and fix the boundaries of the shares of the plaintiffs and defendant No.1. But at the same time he submitted that Court Commissioner be directed to show the internal existing roads and construction of the parties.

4. In the present matter, it is not in dispute between the plaintiffs and defendant No.1 that their shares are towards northern side of Gat No.453. From the averments in the plaint, it can be easily seen that real dispute is between plaintiffs and defendant No.1. Moreover, from the pleadings of the parties, it can be easily inferred that there is boundry dispute between them. The location of the shares of the parties as shown in rough sketch map is not in dispute. There is no sub division of shares of the parties. Therefore, only remedy available to the parties is to seek joint measurement of the shares of the parties. Hence, as there is a boundry dispute between the parties and considering the peculiar circumstances in my opinion appointment of Court Commissioner for showing the boundries of internal shares of the parties will be helpful to decide the matter on merits. Hence, appointment of Court Commissioner will be helpful to decide the controversy between the parties. In the cumulative result of above discussion, considering the nature of the dispute, in my considered view it is a fit case to appoint Court Commissioner. Accordingly, application deserves to be allowed and I proceed to pass following order.

ORDER

- 1 The application (Exh.5) is hereby allowed as follows.
- 2 The Cadastral Surveyor from the office of Deputy

Superintendent of Land Record, Shrigonda is hereby appointed to measure the suit property Gat No.453 situated within the limits of Shrigonda Nagar Parishad and show the boundries of the shares of the plaintiffs and defendant No.1 by taking help of rough sketch map along with plaint.

- 3 The plaintiffs are hereby directed to deposit court commission fee with the concern office within 14 days from today and also file affidavit to that effect on next date without fail.
- 4 Issue court Commission Writ accordingly along with copy of plaint, and Written Statement.
- 5 Dictated and pronounced in open Court.

Shrigonda.
Date : 5/10/2016.

(K. M. Kayangude)
Jt. Civil Judge Senior Division,
Shrigonda