

MHAH230002512015



Order below Exh.64 in R.C.S.No. 104/2015
Dattatray Kolape Vs. Popat Shelar & Ors.

1- Perused application and say filed below it. Gone through record. Heard learned advocates for both the sides at length.

2- The plaintiff has filed present application for re-measurement of entire Gat No.105 situated at village Pisore budruk, Tal. Shrigonda, Dist. Ahmednagar. According to plaintiff, earlier the suit was filed for removal of encroachment, possession and perpetual injunction. Accordingly, Court commissioner was appointed for measurement of the suit property and after the said measurement, the suit was decided and decreed on merit. In the said decree, defendant Nos. 1 to 3 were directed to hand over the possession of an area of 18Are which was shown in violet colour within three months. However, being aggrieved of the said judgment and decree, defendant Nos. 1 to 3 preferred an appeal and accordingly on 20/03/2023 the Hon'ble Appellate Court allowed the appeal and set aside the judgment and decree passed in R.C.S. No. 104/2015. So also, in the said judgment, the Hon'ble Appellate Court also directed the plaintiff to file fresh application for re-measurement of land Gat No.105. Hence, the plaintiff has filed the present application.

3- The application is opposed by respondent Nos.1 to 3 stating that the application is not legal and valid. However, it is prayed to pass the necessary order.

4- I have carefully gone through the judgment and decree passed in R.C.A.No. 314/2019 wherein Hon'ble Appellate Court in para Nos. 18 to 22 has observed the various lacunas in the earlier measurement. The Appellate Court has observed that in the measurement map the Court commissioner had not shown the existence of crop. He had also not shown the existence of pomegranate and lemon trees adjacent to the common band and distance between the trees and bandh. The Hon'ble Appellate Court has further observed that the Court commissioner had not measured the width of the common bandh showing the front pothissas in entire land Gat No. 105. So also he has not shown the existence of common well, Nala, appearing towards north side of the bandh and easement way at the south side. The Hon'ble Appellate Court has also observed that the Court commissioner ought to have shown the actual area of suit property excluding the area encroached by defendants and the actual area in possession of defendant Nos. 1 to 3 in the measurement map. Hence, the Hon'ble Appellate Court has remanded back the present matter for reconsideration after remeasurment of entire land Gat No. 105 by Deputy Superintendent of Land Record, Shrigonda.

5- After going through the pleadings and the direction given in R.C.A.No. 314/2019, it is evident that in order to ascertain the exact area of encroachment at the hands of defendant Nos. 1 to 3, if any, it is necessary to re-measure the entire land Gat No.105 at village Pisore Burduk, Tal.Shrigonda, Dist. Ahmednagar through Deputy Superintendent of Land Record, Shrigonda directing him to carry out measurement by showing the exact position and width of common

bandh, existence of crop (if any) Pothissas, the position and distance of Pomegranate and lemon trees from the common bandh, position of common well and Nala and the exact measurement of the land encroached by the defendant Nos. 1 to 3 if any in the measurement map. Hence the following order.

Order

- 1) Application is hereby allowed.
- 2) The cadastral surveyor from the Office of Deputy Superintendent of Land record, Shrigonda is hereby appointed as a Commissioner for carrying out measurement of entire land Gat No.105 situated at village Mauje Pisore Budruk, Tal. Shrigonda, Dist. Ahmednagar,
- 3) The Court Commissioner is directed to carry out measurement of land Gat No.105 situated at village Mauje Pisore Budruk, Tal. Shrigonda, Dist. Ahmednagar, by showing the exact position and width of common bandh, existence of crop (if any) Pothissas, the position and distance of Pomegranate and lemon trees from the common bandh, position of common well and Nala and the exact measurement of the land encroached by the defendant Nos. 1 to 3 if any in the measurement map.
- 4) He is further directed to carry out the measurement by issuing notices to the parties.
- 5) The Commissioner is also directed to prepare Survey Map of measurement of entire land Gat No.105 situated at village Mauje Pisore Budruk, Tal. Shrigonda, Dist. Ahmednagar, and submit his report **within two months from the receipt of writ of commission.**
- 6) The plaintiff is directed to pay necessary Commission fees

directly to the Office of Deputy Superintendent of Land record, Shrigonda.

7) The plaintiff is directed to furnish the copies necessary documents, extracts and maps for commission work.

8) The plaintiff to comply the aforesaid directions on or before next date. Commissioner may take the aid of the map filed alongwith the plaint during the course of measurement.

9) Writ of Commission be issued to Deputy Superintendent of Land record, Shrigonda accordingly, after the aforesaid compliance.

Date :- 09/06/2023.

(A.N. Kulkarni)
Civil Judge, S.D.
Shrigonda.