

Order Below Exh. 5 in R.C.S.No. 275/2021

1] Present application has been placed on behalf of the plaintiff under Order XXVI Rule 9 of Code of Civil Procedure 1908 for appointment of Court Commissioner to undertake the joint and internal measurement of land bearing Gat no. 12, situated within the limit of village *Mundhekarwadi*, Tal. Shrigonda, Dist. Ahmednagar, for the purpose specifying and demarcation of boundaries of the co-sharers alongwith ascertaining alleged encroachment on the part of defendants. Defendant no. 1 & 2 have resisted the application by filing their written statement cum say at Exh.13. Perused the application and say. Heard, learned advocates appearing on behalf of both the parties. Having regards to the rival contentions of both the parties, argument advanced on behalf of both the parties and factors required to be taken into account while appointing the court commissioner, following points have been arisen for determination and discussion and my findings against each of the point along with its reason is as under :-

Sr. No.	Points	Findings
1	Whether there is a boundary dispute between the parties to the suit ?	Yes
2	Whether there is eminent necessity for appointment of court commissioner ?	Yes
3	What order ?	Application is allowed.

:: REASONS ::

AS TO POINT NO. 1 TO 3:

2] Admittedly, defendants and plaintiff are adjacent owner having their land being situated in Gat no. 12. It is contention of the plaintiff that, defendants have made encroachment over their land to the extend of 15 to 20R. Through their written statement cum say, defendants have not only swept aside the contention of the plaintiff but they have also taken the stand that plaintiff herself has made an encroachment over their land. Having regards to rival contention of both the parties, boundary dispute appears to be in exist between the parties. Since there is a specific assertion and denial with regards to making the encroachment over the land of plaintiff, said question is essential to be resolved on the basis of cogent and concrete evidence. The ocular evidence upon the fact as to whether the encroachment over the land of plaintiff has been made, would be contrary to each other. Therefore, for ascertaining the fact whether the defendants have made the encroachment over the land of plaintiff, the land of plaintiff as well as defendants is essential to get measured through Deputy Superintendent of Land Records by appointing him as Court Commissioner. It is settled position of law that, if there is a boundary dispute or dispute pertaining to encroachment, said fact must be elucidated by way of directing the local inspection to be done by Court Commissioner. As I said earlier, the ocular evidence of both the parties on the issue of encroachment, would be contrary to each other and on the basis of ocular evidence, it would be highly difficult to arrive at definite conclusion as to whether or not the defendants have made the encroachment over the land of plaintiff. In such circumstances, the

report of Court Commissioner and map or sketch prepared by him after undertaking the measurement of the land of both the parties, would be crucial evidence for determining the fact with regards to alleged encroachment. Therefore, in order to determine the real question into controversy between the parties, the joint and internal measurement of the suit property is essential to be undertaken. Considering above facts and circumstances, I answer point no. 1 & 2 in affirmative and pass following order for point no.3 :-

:: ORDER ::

01. Application is allowed.
02. Deputy Superintendent of Land Records, Shrigonda, Dist. Ahmednagar, is hereby appointed as Court Commissioner for internal joint measurement of entire land bearing Gat no.12, situated within the limit of Village Mundhekarwadi, Tal. Shrigonda, Dist. Ahmednagar.
03. Deputy Superintendent of Land Records, Shrigonda is hereby directed to visit and inspect the land bearing Gat. no.12, and undertake internal joint measurement of entire land bearing Gat no.12, situated within the limit of Village, Mundhekarwadi, Tal. Shrigonda, Dist. Ahmednagar and submit his report as to whether any encroachment over the land of plaintiff is found, if so, to what extent, on or before 26/07/2022.

04. Plaintiff is directed to pay the fees of measurement and make the necessary compliance.

05. Issue writ, accordingly.

Shrigonda.

Date :- 07/06/2022.

(**H. J. Pathan**)
2nd Jt Civil Judge (S.D.),
Shrigonda.