Order below Exh. 29 in RCS No. 675/2018
(CNR No. MHAH250016652018)

Say of plaintiff and defendants was called on report of measurement conducted as per Order below Exh. 27.

2. Plaintiff vehemently opposed the report of measurement on following grounds;

a. Commissioner has stated the cause of measurement as order of Civil Court in RCS No. 94/2021 dated 16.8.2021, which is incorrect.

b. Date of commission of measurement is not written in the map of measurement.

c. Map of measurement does not bear signature of Surveyor.

d. In the notice sent before measurement, Measurement Register Number is written as 465, however, on B copy of map of measurement, Measurement Register Number is mentioned as 454.

e. Defendants are shown as a panch witnesses on panchnama.

Plaintiff has therefore, submitted that surveyor, S.D. Sabale has not carried out the measurement as per directions of Court and the commission report filed on record is incorrect and hence, not acceptable. Plaintiff has therefore, prayed that show cause notice be issued to the concerned sSurveyor and the concerned office be directed to carry out re-measurement as per directions of Court in order below Exh. 27.

3. Per contra, defendants submitted that such re-measurement

can not be directed.

4. Heard learned advocate on either side.

5. In support of submissions, learned advocate for plaintiff has relied upon judgment in the case of, **Jamir Khan Vs. Dharamchand Sawala 2018(1) Mh.L.J. 174** and submitted that as there is no fault on the part of plaintiff in such faulty measurement, and as he should not suffer for such irresponsible act of surveyor, concerned office be directed to carry out re-measurement and submit report.

6. Learned advocate for defendants has relied upon judgment in the case of, **Sangita Machhindra Thorat Vs. Changunabai Raosaheb Belote & Ors.,** decided by the Hon'ble Bombay High Court, Judicature of Bombay, Bench at Aurangabad in **Writ Petition No. 8989/2019,** decided on 24.7.2019 and submitted that after recording of oral evidence, if other party files an application for seeking appointment of court commissioner, such can be considered on merit.

7. I have gone through the submissions advanced on either side in the light of observations in the judgments cited supra. It is matter of record that as per order below Exh. 27, the predecessor of this court had appointed Taluka Inspector of Land Record as court commissioner and was directed to measure disputed land Gut No. 765 situated at Wadzire, Tal. Parner in presence of parties. As pointed out by learned advocate for plaintiff, learned advocate for defendants has not disputed that there are some mistakes in report of commissioner. Such report is a part of evidence and also necessary to be proved, however, if there are patent mistakes in the report, but naturally

difficulties would arise while considering it in evidence. It does not appear that plaintiff is at fault. Therefore, I find that it is necessary to carry out measurement as directed by order below Exh. 27. So far as submission of learned advocate for defendants that after oral evidence, such application can be considered, I find that as directions of measurement have already been issued earlier, there is no legal hurdle in completing the said recourse already directed as per order Exh. 27 and therefore, in view of my aforesaid observations, I pass following order,

ORDER

1. Deputy Inspector of Land Record, Parner is hereby directed to carry out re-measurement of Gut No. 765 situated at Wadzire, Tal. Parner, Dist. Ahmednagar as per order below Exh. 27.
3. The order passed by predecessor of this court be low Exh. 27 be sent to Deputy Inspector of Land Record for reference.
4. The concerned is directed to submit report of commission within one month.

RAHUL KESHAV DESHPANDE
Digitally signed by RAHUL KESHAV DESHPANDE
Date: 2023.03.02 18:06:35 +0530

(R. K. Deshpande)
Civil Judge Junior Division,
Parner.

Date : 01.03.2023
Place : Parner.