

ORDER BELOW EXH. 92 IN R.C.S. NO. 01/2008

(CNR No. MHAK070000112008)

(Passed on 26/04/2019)

1) Plaintiff has filed this application for re-measurement by S.L.R., Akola. Defendants opposed by filing say on the application itself.

2) Perused application and say. No supporting affidavit is filed. Heard both parties.

3) This is the objection cum application by plaintiff, wherein he has prayed for re-measurement. It is contended by plaintiff that T.I.L.R. has not measured as per the position on the ground. Plaintiff provided copies of relevant sale deeds, gift deed, 7/12 extract and measurement map prepared in the measurement of the year 1995. However, TILR has not considered said documents and wrongly measured the property by fixing E.T.S. Machine on wrong station. Therefore, report and map filed by T.I.L.R. is defective. Further, plaintiff gave detailed statement to T.I.L.R. Balapur on 02/07/2018. However, it has not been considered as property of defendant is situated towards western side of suit property and that portion has been wrongly shown in the map. TILR has not measured as per the position on the ground and as per four boundaries mentioned in sale deeds. T.I.L.R. Balapur has shown parts of suit property and Nanda as one and same. He has not shown seven different parts of the Gat. Further, he has not shown area of lake. No notice issued to S.D.O., Balapur or Zilla Parishad or Patbandhare department prior to measurement. Further, name of owner of area marked as ABCD has not been shown. Therefore, report and map should not be accepted and re-

measurement be done through SLR, Akola.

4) Defendants objected the application. They contended that allegations against TILR are denied. TILR measured by following due procedure of law and as per the direction of this Court. Measurement report goes against plaintiff and real position is brought by TILR on record. Therefore, application is filed to prolong the matter and hence it be rejected.

5) Perusal of court commissioner report and map reveals that there is no mention in the report that the concerned measurer considered documents supplied by both parties including gift deed and sale deeds.

6) Further, it is also not known whether measurer considered earlier measurement map of the year 1995. However, it is to be noted that Hon'ble District Court has observed in their judgment in para no. 29 that measurement map of 1995 does not resolve boundary dispute between parties as sale deed of defendant is subsequent to it. Further, considering the time gap also map of 1995 is not helpful. Therefore, in my view it is not mandatory and helpful for TILR to consider measurement map of 1995.

7) As far as objection with regard to wrong positioning of ETS machine, it cannot be presumed at this stage merely on the ground that some documents of transfer were not considered by measurer.

8) The next objection is that plaintiff gave detailed statement to T.I.L.R. Balapur on 02/07/2018. However, it has not been considered as property of defendant is situated towards

western side of suit property and that portion has been wrongly shown in the map. It is contended that Gut no. 631/1 is in different location than as shown in the map. Further, area mentioned within ABCD in the map is of defendant, whereas measurer shown it as fallow/waste land, and has avoided to mention the possession of defendant over it. Further, area mentioned within 22 to 36 is of defendant as per their sale deed, but it is not so mentioned. The objections so expressed are with respect to truthfulness of measurement, which cannot be ascertained at this stage. However, it has not been mentioned in the report that the statement of plaintiff dated 02/07/2018 was considered or not while measurement was being carried out. It is incumbent on measurer to consider statements made by parties. Further, it is also not clear whether measurer has measured land of defendant as per sale deed dated 05/04/2005 as there is no such mention in either report or map.

9) It is submitted by plaintiff that no explanation of delay is mentioned in report. Perusal of report reveals that measurement was carried on 11/10/2018 and forwarded to this court on 25/01/2019. Thus, there is delay and there is not a single word about cause of such delay in the report.

10) It is contended by plaintiff that pot hissa of suit property and land of Nanda Bhaskar purchased by her from Sulochana Kadam, are different. However, they are shown as same. Further, there are 7 pot hissa of Gut no. 631, which are not shown separately. Perusal of map confirms contention of plaintiff. Therefore, it will require re-measurement.

11) It has been contended that the area of lake is not mentioned, and notice to either SDO, ZP or Patbandhare department has not been issued for measurement. As far as notice is concerned, it is not clear whether such notice of measurement was issued to relevant government department in whose jurisdiction the area of lake is situated. Further, area of lake is also not mentioned. Considering that the lake forms part of Gut no. 631, it was incumbent upon measurer to issue such prior notice and to show exact area of lake in the map. This also calls for re-measurement.

12) Measurer has also not mentioned the part numbers and name of persons in whose name areas within ABCD and also EFUTSR stand. Thus, the whole exercise by measurer is half-hearted and incomplete.

13) Under above circumstances, it appears that measurement has not been carried out in proper perspective. For elucidating the matter in dispute and as per order of Hon'ble District Court, Akola it is necessary to have a clear, unambiguous and complete measurement. For that purpose entire Gut no. 631 will have to be measured. In view of incomplete and ambiguous measurement, delay as stated above in forwarding report and map to this court, and the area to be measured which also consists of a lake, it would be necessary to order re-measurement and that too by SLR, Akola. Further, considering that this suit is made time bound by Hon'ble District court, and that already time is extended twice, time limit is to be given to court commissioner, who shall follow the same. Further, parties shall cooperate him for

completion of work within time. Application is thus, deserves to be partly allowed. Hence, the order.

: O R D E R :

- 1) Application Exh. 92 is hereby partly allowed.
- 2) S.L.R., Akola is hereby appointed as court commissioner.
- 3) Court commissioner shall issue prior notice of measurement to all concerned including relevant government department in whose jurisdiction the area of lake is situated.
- 4) Court commissioner shall measure the entire Gut no. 631 along with suit property and land of defendant purchased by him vide sale deed dated 05/04/2005.
- 5) Court commissioner shall fix boundaries of suit property and land of defendant with their exact area and location.
- 6) Court commissioner shall show both these properties as per revenue record and as per actual possession, separately by special markings or colour as he deems fit, in the map.
- 7) Court commissioner shall also consider documents supplied by both parties including gift deed and sale deeds during measurement, and also specifically mention in the report about such consideration. If court commissioner is of the opinion that area and location of either property mentioned in these deeds differ with areas with their record or actual possession, he shall also show

that area in the map with different markings. He shall also make clear statement about this in the report.

8) Court commissioner shall also consider written statement of either party, if filed with him before measurement. He shall mention fact of receipt of such statements and whether he considered the same during measurement.

9) Court commissioner shall show all pot hissa (parts) of said Gut as per their record in the map. Further, if pot hissa of suit property and land purchased by Nanda Bhaskar from Sulochana Kadam are different then he shall show them differently as per their record even if possession is joint.

10) Court commissioner shall mention and show exact area of lake.

11) Court commissioner shall mention in the map each and every part numbers and name of persons in whose name they stand in their records.

12) Court commissioner shall file detail report as directed alongwith map within 1 month from the date of receipt of writ.

13) Both parties to supply all relevant documents within 7 days from the date of this order. They shall file pursis with that effect on expiry of said time.

14) Plaintiff shall pay requisite fees in the office of SLR, Akola within 7 days from the date of this order. He shall file pursis with

that effect on expiry of said time.

15) If court commissioner is unable to comply within stipulated time, he shall forward written cause of delay within 3 days of expiry of time without fail.

16) Both parties shall cooperate court commissioner for completion of work within time.

17) Issue writ accordingly with whole copy of this order. Concerned clerk of this court is directed to send writ within 2 days from the date of this order.

18) Costs on applicant.

Sd/-

Balapur
Date:- 26.04.2019

(C. P. Raghuvanshi)
Civil Judge, J. D., Balapur.

Certificate

I affirm that the contents of this P.D.F. file are same word for word as per original order.

Name of Steno : S.V. Indane.
Court Name : C.J.J.D. & J.M.F.C., Balapur.
Date : 26/04/2019.
Signed by Presiding
Officer on : 26/04/2019.
Uploaded on : 26/04/2019.

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