

RCS No. 05/2010

Ramkrushna .Vrs. Grampanchayat

CNR No. MHAK070001502010

Order Below Exh. 66.

(Passed on 03/03/2018.)

01] Plaintiffs filed the application for re-measurement of suit property by appointing Court Commissioner under order 26 rule 9 of the Code of Civil Procedure.

02] Read the application and say of defendant No.1 has given his say overleaf of this application.

03] Plaintiffs contended that the plaintiffs filed application for measurement of the suit property through T.I.L.R vide Exh.53. Accordingly, suit property measured and submitted his map. During the evidence, T.I.L.R. deposed that, he did not carry the measurement as per the norms of measurement manual, which is required according to the law. The T.I.L.R. has committed mistake in carrying measurement. As per the order Exh.53, the T.I.L.R. was bound to describe the plaintiff's property, disputed property and defendant's property in his map. But, while preparing the map, the T.I.L.R. has not shown this fact in his map. Therefore, it is clear that the suit property has not measured as per the order of Court and as per the manual. In that circumstances, it is necessary to allow the application and directed to the T.I.L.R. to re-measurement the suit property and submit the map of measurement.

04] The defendant has contended that the Court already appoint the Court Commissioner vide Exh.53 and directed to the T.I.L.R. to measure the property. The Court Commissioner measured the disputed side and submit the report. After the measurement, the plaintiff has not raised any objection.

Therefore, the said application is not tenable. So, application is liable to be rejected.

05] Perused the record. Heard the learned Counsels for the plaintiff and defendant. It is pertinent to note here that before the evidence, the plaintiffs have filed the application for measurement of suit property by T.I.L.R. i.e. Court Commissioner. The said application allowed with direction. As per this order, the T.I.L.R. has measured the suit property and submitted his map. During the evidence, the T.I.L.R. has admitted in his cross-examination that the map prepared in the ratio of 250 but the measurement shown in the map as 1 : 500. He further admitted that as per the measurement manual, the ratio of measurement is 1 : 500 or 1 : 1000. The gist of cross-examination of T.I.L.R. itself shows that he has not measured the suit property according to the manual and there are so many lacunae.

06] **In Jamir Khan S/o Amir Khan ..Vs.. Dharamchand S/o Rupchand Sawala reported in 2018(1) Mh.L.J. 174 & in Vijay Shravan Shende ..Vs.. State of Maharashtra, 2009(5) Bom.C.R. 306** wherein the Hon'ble Bombay High Court held that, if earlier measurement is not carried out properly, in the suit for removal of encroachment, the proper and correct procedure and course would be to order re-measurement, and therefore, the order of re-appointment of Commissioner is proper.

07] As per provision of order 26 Rule 9 of Code of Civil Procedure, the Court has to power to appoint a Court Commissioner so as to ascertain to extent of encroachment. The Court commissioner has to follow the procedure prescribed under Rule 10 of Order 26. In case of his failure to adopt proper procedure, his report may be discarded. But, the parties to the

litigation should not suffer for latches on the part of the Court Commissioner. Thus, in case if the Court Commissioner had not complied with the order of the Court and failed to measure the property, he can be re-appointed to measure the property by following due procedure of law.

08] The Court has discretion to order local investigation. The object of local investigation is not to collect evidence. The purpose of appointment of Court Commissioner to ascertain the facts on the spot. Re-measurement of the suit property by the Court Commissioner would not have prejudice the interest of either of the parties, because it was only in that eventuality that it will be possible for the Court to arrive at proper conclusion. If defendants were aggrieved by the report given by commissioner so appointed by the court, in that circumstances, they have opportunity to cross-examine the commissioner and to point out how the conclusion were not correct. No doubt, before passing this order, the Court had appointed to T.I.L.R. as Court Commissioner and he also measure the property and filed his report with map. But, during the evidence, the T.I.L.R. deposed that how he was conducted measurement. So, it is prima facie clear that, the T.I.L.R. has not measure property according to the manual and direction of this Court. I have taken the consideration of above fact and Judgments of Hon'ble Bombay High Court I reached to the conclusion that, in the interest of justice it is necessary to grant this application. Hence, I pass the following order.

Order

- (1) The application is hereby allowed.
- (2) Taluka Inspector of Land Revenue Record (T.I.L.R.) is hereby appointed as a Court Commissioner for re-measurement of suit property.

- (3) Court Commissioner should visit to the spot and take a measurement of the suit property of plaintiff and prepare the map of measurement accordingly.
- (4) Court Commissioner is hereby directed to describe the plaintiff's property, defendant's property, disputed suit property, in his map and give his clear opinion as to whether any encroachment is committed and should also show the encroached portion, if any, in the measurement map.
- (5) Plaintiffs and defendants are directed to file the copies of sale-deeds or any other documents showing the measurement of their properties for providing it to the Court Commissioner along with commission writ.
- (6) Court Commissioner take into consideration of all measurement given in the document while carrying out actual measurement.
- (7) Plaintiffs shall pay the Court Commissioner Fees as per the rule.
- (8) It is directed to the Court Commissioner that, he shall measure the property according to the manual and do not commit any mistake as stated in the evidence of T.I.L.R. below Exh.64.

- (9) Court Commissioner is directed to submit his report after receipt of Commissioner Writ, within two months.

Balapur.
Dt. 03/03/2018.

Sd/-
(B. M. Kale)
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	:	03/03/2018.
Signed by Presiding Officer on	:	05/03/2018.
Uploaded on	:	05/03/2018.
