

MHAU050002732010



RCS No.62/2010  
Sanjivani Vs. Priya

**ORDER BELOW EXH. 77 IN R.C.S.No.62/2010**  
**(CNR No.MHAU0500 0273 2010)**

1. The present application for appointment of Court Commissioner was moved by the plaintiff vide order 26 Rule 9 of Code of Civil Procedure.

2. It is submission of learned advocate of plaintiff Shri. Mule that in the present matter, the Cadestral Surveyor Rahul Bansode's evidence was already recorded. However, he has not measured the entire land of Gut No.161, which is necessary for deciding the issue of extent of encroachment. Infact, he has measured only half of the Gut No.161. Furthermore, the Cadestral Surveyor has not fixed the boundaries, even the application was made for the same, prior to measurement at TILR Office. Thus, the re-measurement is need to be done in the present matter for proper adjudication and avoidance of multiplicity of the suit.

3. Per contra, the learned Advocate for defendants Shri. Bodkhe submitted their Say vide Exh.79 and strongly opposed the present application. It was the submission of defendant that the present application is merely filed out of the frustration, as the plaintiff found that his previous measurement is unable to strength his case. It

was another submission that the matter is posted at the stage of Judgment and present application is filed merely to prolong the matter. Furthermore, if at all the plaintiff was not satisfied on the measurement of the Surveyor this is not a proper way to file the present application. The application is merely filed to collection of the evidence and that too after 9 years. Furthermore, the plaintiff's uncultivated land is laying on the southern side of the road and this fact is already deposed by the surveyor and mentioned in the village map also. Thus, it was prayed that the present application be rejected.

4. Perused the record. The learned advocate of both sides filed various case laws which I have minutely gone through.

5. In the present matter, on perusal of the testimony of the Cadestral Surveyor at Exh.54, it prima facie appears that in his cross-examination at page no.3 he has categorically admitted that he has measured the part of Gut No.161, which is at the southern side of Jategaon – Mali-Ghogargaon road. He has also admitted that despite measurement he has not shown the said southern side part of of the Gut No.161 in his measurement map. Thus, it appears that the exact measurement of entire Gut No.161 was not on record.

6. The first submission of learned advocate of defendant is that the present application is an attempt to collect evidence. The said submission is not at all tenable as in the encroachment suit, the collection of evidence in the form of the extent of encroachment has to be come on record. If, that was not so, the decree if any, will be mere a paper decree and there will be a lot off problem in execution.

7. The case law relied by the learned advocate of the defendant is, **Shivaji Sawant Vs. Navnath W.P. No.921/2016, wherein Hon'ble Bombay High Court, bench Aurangabad** pleased to confirm the order of trial court, wherein the prayer of re-measurement was rejected. In that matter, Hon'ble High Court pleased to confirm the order of a trial court relying upon, the map at Exh.30 and report of the Court Commissioner, which indicate the encroachment committed by the defendants. However, in the present matter, as I have already stated in para 5 that the TILR in his cross-examination squarely admitted that the measurement of the southern side of the Jategaon – Mali-Ghogargaon road, was not mentioned in the measurement map. Thus, the factual matrix in both cases are different and therefore with much humbleness, I mentioned here that the above Judgment will not be applicable to the present case.

8. With repetition of costs, it need to be mentioned herein that in the matter of removal of encroachment, the exact encroachment has to be come on record as it would be assist the court in arriving the just decision. Considering the admission of Court Commissioner that he has not included, the area, which he measured on the southern side of Jategaon – Mali-Ghogargaon road, in the measurement map, cannot be said to be a map a conclusive one. Therefore, in the present matter, I am of the considered view that in order to avoidance of multiplicity of litigation and for reaching the just decision, it would be proper to appoint the Court Commissioner for measurement of entire Gut No.161. It is needless to state that the defendant has every opportunity to cross examination the Court Commissioner on submission of Court Commissioner report. No doubt, the matter was pending since last

more than 10 years and the present application is filed much latter, therefore the costs need to be saddled upon the present plaintiff. Therefore with aforesaid reasoning the present application deserves to be allowed, subject to costs. Hence, the order.

**ORDER**

1. The application Exh. 77 is allowed, subject to costs of Rs.3000/-.
2. The Taluka Inspector Land Record, Vaijapur is hereby appointed as Court Commissioner.
3. He is directed to make measurement of entire Gut No.161 at mauje Ghogargaon, Tq. Vaijapur, Dist. Aurangabad and show the encroachment, if any, over the suit property i.e. property of plaintiff, in the map of measurement.
4. He is further directed that prior to visiting Gut No. 161, he shall issue notices to defendants and adjacent owners of Gut No. 161.
5. Plaintiff shall deposit commission fee directly in the office of T.I.L.R., Vaijapur.
6. Plaintiff shall pay process fee and shall supply necessary documents and after compliance, writ be issued to T.I.L.R., Vaijapur.

(S.R.Shinde)  
2<sup>nd</sup> Jt. Civil Judge Jr. Div.  
Vaijapur.

Date:- 14.03.2022

**C E R T I F I C A T E**

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

Name of the Stenographer	:	G.K.Jadhav
Court	:	S.R. Shinde, 2 <sup>nd</sup> Jt. CJJD & JMFC., Vaijapur, Dist.Aurangabad.
Date	:	14.03.2022
Order signed by the presiding officer on	:	15.03.2022
Order uploaded on	:	15.03.2022