



ORDER PASSED BELOW EXH.43 IN R.C.S. NO.155/2014
(Laxmibai+1 Vs. Yamunabai and other)
(Order delivered on 07.09.2019)

1] Present application is filed by the plaintiff for sending matter for re-measurement of the suit property.

2] It is contended by the plaintiff that, in present matter as per order of Hon'ble District Court this court has appointed Deputy Superintendent of Land Record's as Court Commissioner and directed to measure entire Gat No.160 and to submit his report with the details regarding who are having possession around the plaintiff's property and who have encroached upon plaintiff's property. As per said order, on 21.02.2019 measurement was carried and the map with detail report was filed. In said map in the index it is shown that, as per 7/12 extract plaintiff owns 50 R area, however she is in possession of only 5 R area and 45 R area is less in her possession. However, the Court Commissioner have not shown in whose possession said 45 R area is there. Therefore, the measurement carried by the Court Commissioner is not proper and hence matter be sent for re-measurement.

3] Defendants had not filed their say, hence, application proceeded without their say.

4] Perused record. Heard learned advocate for the plaintiff.

5] On perusal of record it appears that, present suit was dismissed on 29.02.2016 and plaintiff preferred Regular Civil Appeal No.139/2016

before Hon'ble District Court Aurangabad. In said appeal the judgment of trial court was set aside and matter was returned back for fresh hearing. It was directed by the Hon'ble District Court, that Court Commissioner be appointed and matter be decided within six month from the date of receipt of R. & P. Accordingly, after the receipt of R. and P. notices were issued to both the parties, however defendants failed to appear. Thereafter, on 17.12.2018 order below Exh.01 came to be passed and as per the direction of Hon'ble District Court, Deputy Superintendent of Land Record's Kannad was appointed as Court Commissioner. He was directed to carry the measurement of entire Gat No.160. In said order it was also directed that he should prepare map by mentioning the actual measurements and demarcating the boundaries of the land and also show the precise and concise area under encroachment, if any, in the map and then shall prepared the report in respect of the encroachment in the land of plaintiff if any and shall file the map and report in the court on or before 17.01.2019. The Court Commissioner was also directed to take this matter on top priority as per direction of Hon'ble District Court.

6] On perusal of record it appears that, after reminder letters and show-cause-notice to the Court Commissioner the report came to be filed on 12.06.2019. On perusal of the map attached with said report it appears that, the Court Commissioner has shown the area under the possession of respective owners. In the index at Serial No.16 the Court Commissioner has mentioned that, area shown in red colour is in possession of the plaintiff which is 5 R area, however, as per 7/12 extract 45 R area is less. It is pertinent to note that, in said map the Court Commissioner has not shown in whose possession said less 45 R area is situated. Therefore, it is apparent and clear that, the Court Commissioner has not followed the directions given by this court. In such circumstances the matter is again required to be

send to the Court Commissioner for re-measurement of suit property and making necessary remarks regarding the area in whose possession the less area of plaintiff is situated.

7] In present matter it is necessary to add that despite of directing Court Commissioner to take this matter on top priority and file the report the Court Commissioner has taken considerable time disregarding the direction of the court and hence show-cause-notice was issued to him. Court commissioner i.e. Deputy Superintendent of Land Records is hereby warned that he should comply with the order of this court within one month, in absence of which necessary action as per law will be taken against him. Hence, following order is passed :-

ORDER

- 1) Matter be sent for re-measurement to the Deputy Superintendent of Land Record's Kannad, he is directed to follow the directions already passed in the order dated 17.12.2018 and shall specifically show in whose possession the less area of plaintiff is situated.
- 2) The Court Commissioner is directed to re-measurement the property in the same fees which was earlier deposited by the plaintiff.
- 3) The Court Commissioner is hereby directed to submit his report within one month from the receipt of this order to him. On failure of filing the report in contemplated time serious action as per law will be taken against him.
- 4) Issue writ accordingly.

(Dictated and pronounced in Open Court).

Date : 07-09-2019.

(Pankaj K. Ahir)
Jt. Civil Judge, J.D.
Kannad, Dist. Aurangabad.

CERTIFICATE

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 : A.V. Chopade,
Court : Jt. C.J.J.D., Kannad.
Date : 07.09.2019,
Order signed by the
presiding officer on : 16.09.2019,
Order uploaded on : 18.09.2019.

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