

MHAU100003492016



Sk. Rafiq Vs. Sk. Gulab

**Order below Exh. 15 in R.C.S. No. 27 / 2016**

01. Read application and say filed by defendant. Heard both sides at length. Present suit is filed for recovery of possession of encroached portion. It is submission of plaintiff that defendant has encroached over 27 R portion of his property, therefore, he prays for measurement of entire block No. 421, to ascertain actual encroached portion. In support of his contention, he relies on (1) Shamlata wd/o Manohar Raut Vs. Vishweshwara Tukaram Giripunje (LEX(BOM) 2008 1 16) AND (2) Manohar Mahadeorao P agrut Vs. Sau. Sunanda Ramdas Tharkar (LEX (BOM) 2008 4 42). I have carefully gone through the ratio in above cases.

02. Defendant has objected the application stating that block No. 421 is big holding, there are various owners and present suit is filed only against defendant for recovery of 27 R portion which is alleged to be encroached area. He further submits that suit property has yet not been sub-divided amongst holders of block No. 421. Moreover, other holders of the portion of land, are not made party to the suit. In absence of subdivision, said suit property cannot be measured, hence application be rejected.

03. Present suit is filed for recovery of encroached portion. Plaintiff is

holding decree of perpetual injunction in R.C.S. No. 294/1983 against defendant, there is some boundary dispute amongst plaintiff & defendant. It is admitted by both the parties that suit property block No. 421, is not yet subdivided. At this juncture, without help of Cadastral surveyor i.e. Taluka Inspector of Land Records, point in dispute amongst the parties cannot be decided. Moreover, without ascertaining actual land hold by plaintiff, decree in R.C.S. No. 294/1983 cannot be obeyed. Whether said land can be measured or not ?, is to be decided by T.I.L.R. upon the documents supplied to him by the plaintiff. Thus, there is dispute of boundary & encroachment & in such circumstances, appointment of T.I.L.R. as court commissioner to jointly measure entire block No. 421 seems proper. Hence, application deserves to be allowed. Therefore, I pass following order.

### **ORDER**

01. Application is allowed
02. T.I.L.R. Khultabad is appointed as court commissioner to carry out joint measurement of entire land block No. 421, situated at village Takli (Rajera), Tq.Khultabad and he is directed to demarcate the land area hold by each land holders and to show encroachment if any, over the land hold by plaintiff, admeasuring 1 Acre 13 Gunthas, as per the office record & documents supplied by plaintiff & defendant.
03. Issue writ accordingly.
04. Plaintiff to pay commission fees directly in the office of T.I.L.R. Khultabad within one month, in default, said order shall be deemed to be cancelled.

Place : Khultabad.  
Date :- 11.09.2018.

Sd/-  
(N. V. Bansal)  
Civil Judge – J.D. Khultabad

**CERTIFICATE**

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

Name of the Stenographer	:	S. K. Tripure
Court	:	J.M.F.C. Khulatabad
Date	:	11.09.2018
Judgment signed by the presiding officer on	:	11.09.2018
Judgment uploaded on	:	12.09.2018