

MHAU110011942024

**ORDER BELOW EXH.14**

The plaintiff has filed suit for recovery of possession of the 10R land in Gut no.360 encroached by defendants. The plaintiff has filed again this application for appointment of Court Commissioner for measurement of land in Gut no.360 situated at Mauje Dongargaon Kavad, Tal. Phulambri, Dis. Chh. Sambhajinagar.

2. Plaintiff came with the case that he is owner and in possession of suit property which was mortgaged by Jayshree and Priyanka who stood surety to Ashish Vishnu Gadekar. Plaintiff further stated that as Ashish failed to repay loan amount therefore, proceedings initiated and properties mortgaged against loan were ordered to be auctioned. Plaintiff purchased said property in auction ordered by Hon'ble District Court, Aurangabad. Since then, plaintiff is in possession of suit property. While, defendant being lady taking advantage of the same, started encroaching portion of suit property and approximately 10R land is encroached till date by defendant. When plaintiff went to defendant for measuring Gut no.360, the defendant do not agreed and taken objection for the same when plaintiff tried to measure his land. Therefore, present suit is filed. In this matter, advocate for the plaintiff filed present application stating to measure land of Gut no.360 and fixing boundaries of plaintiff through TILR office, which came to be rejected as filed at premature stage.

3. After service of summons, defendant not appeared therefore, proceeded ex-parte against her.

4. Read the application. Heard arguments advanced by Ld. Advocate of the plaintiff. Following points arise for my determination. I have recorded my findings against each of them for the reasons as follows.

Sr. No.	Points	Findings
1.	Does appointment of Court Commissioner is essential for the purpose of elucidating matter in dispute?	Positive
2.	What Order?	Application is allowed.

REASONS

5. Heard argument advanced by the Ld. Advocate for plaintiff. He argued that defendants not remaining present in this suit even after service of summons upon them, hence, matter proceeded ex-parte against them. Plaintiff filed present suit for removal of encroachment done by defendants upon 10R land which was in possession of the plaintiff as purchased from Court Auction.

6. Earlier also plaintiff filed similar application which was rejected on the ground that before filing evidence, plaintiff filed that application which was not considered at that stage. Now, plaintiff has filed on record whole of his oral as well as documentary evidence. To support his contentions, he has filed on record his evidence affidavit and also filed on record documentary evidence 7/12 extracts of Gut no.360, copy of sale deed dated 08.03.2019 executed in Court Auction, copy of mutation entry no.2342 and 7/12 extract of Gut no.360, dated 04.12.2024. On the basis of evidence filed on record, plaintiff praying to allow application to measure Gut no.360, defendants encroached upon his land, by appointing TILR, Phulambri to measure Gut no.360.

7. Earlier application was rejected on the basis that except 7/12 extract, plaintiff did not filed any document to show his ownership over suit property which is now not in question, as plaintiff filed on record aforesaid documents which are exhibited, as well as filed evidence affidavit in his support. At this stage, sufficient documents to proceed with said application. As the plaintiff asked in the application to have local investigation of Gut no.360 which is alleged to have

encroached by defendant. Therefore, present application is granted considering nature of suit and evidence filed on record as matter is proceeded ex-parte against defendant. It is settled position of law that he who alleges, has to prove i.e. burden is upon the plaintiff to prove that defendant encroached upon his land. It seems that as provided by O.26, R.9 of CPC there is no any specific stage though it points out satisfaction of Court is necessary for appointment of court commissioner.

8. At this stage, I am satisfied from oral and documentary evidence as claimed by the plaintiff in his support to proceed further. In the suit of encroachment, in order to derive at just decision of the case, measurement of land of plaintiff and defendant by Cadastral Surveyor is essential however, plaintiff prayed to measure Gut no.360, therefore, considering documents filed, plaintiff has prima facie discharge his burden. Plaintiff has filed present suit for removal of encroachment done by defendant to the extent of 10R, therefore, present application is allowed to the extent of measurement of Gut no.360 only by reflecting land in possession of plaintiff and defendant. Therefore, in such circumstances, present application cannot be allowed. Hence, I pass following order.

ORDER

- i. Present application is allowed.
- ii. TILR of Phulambri is hereby appointed as Court Commissioner to carry out measurement of Gut no.360 situated at Mauje Dongargaon Kawad, Tal. Phulambri, Dis. Aurangabad on the basis of tipan record.
- iii. Before making measurement Cadestrial Surveyor is directed to take base at least two boundary marks as per original tipan Survey record.
- iv. He is directed to follow the due procedure laid down under Survey Manual after taking base of the tipan at the time of joint measurement.
- v. He is directed to submit his report within 90 days from the report.
- vi. Plaintiff is directed to pay entire cost of Commissioner work.

- vii. Issue commission report after payment of necessary expenses and process fees.
- viii. If plaintiff failed to deposit the requisite fees till next date then it would presume that his application stand rejected.

Date: 12.12.2024

(V.V. Raojadeja)
Civil Judge Junior Division
Phulambri.

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 :- Shri. Yuvraj Bhagwansing Mirdhe

Court :- CJJD & JMFC Phulambri.

Date :- 12.12.2024

Order signed by the Presiding

Officer on :- 19.12.2024

Order uploaded on :- 19.12.2024