

MHAU120001702022

**RCS No.- 24/2022
Manoj Vs. Harchanda****ORDER BELOW EXH.- 17**

01. This is an application filed by plaintiff for appointment of Court Commissioner in view of Order XXVI Rule 9 of Code of Civil Procedure, 1908 (for short CPC).

02. It is the contention of plaintiff that plaintiff Nos.1 & 2 are joint owner of land in Gut No.-27 to the extent of 1 H 53 ares of village Uppalkheda. The plaintiff No. 3 is owner of 1 H 50 ares of land in Gut No.- 27. Plaintiff No. 4 is owner of 1 H 32 ares of land and plaintiff No. 5 is the owner of 1 H 72 ares land in Gut No.-27 of village Uppalkheda.

03. It is further contentions of plaintiffs that they have purchased the above said lands from pre-owners. Towards the west side of Gut No.-27 the land of Forest Department is situated i.e. in Gut No.- 205 of village Dhap. In the month of November 2021, plaintiff No.5 received notice from Forest Department about so called encroachment over forest land. Thereafter, the all plaintiffs approached towards the forest department and requested that they purchased the lands under question by way of register sale deeds. But, the said department passed the judgment and held that plaintiff No. 5 has encroached over the so called 29 ares land of Forest Department.

04. When the facts of encroachment came to know the defendants, they started obstruction to the possession of plaintiffs. Plaintiffs approached towards the defendants to measure the land through TILR Office, Soygaon. But defendant not allowed the measure the said land. Therefore, to avoid the dispute all plaintiffs applied towards TILR, Soygaon, but defendants are very influential person and they not allowed the measurement work. Hence, plaintiff prayed to allow his application.

05. The defendants filed their say and opposed the application of plaintiffs. They have further submitted that plaintiffs filed this application to mislead to the Court and to cause annoyance and harassment to the defendants. Plaintiffs are trying to collect evidence with the help of Court Commissioner. Court Commissioner can not be appointed for collection of evidence. Defendants have their land in Gut No.- 26 & 29 of village Uppalkheda-Antur. Plaintiffs have no their lands in the said gut numbers. Hence, they prayed to reject application with heavy costs.

06. Heard both the sides, both the Ld. advocates argued as per their application and say. It appears that the suit is filed for the possession of encroached portion of the suit property of plaintiff. It is the allegations of plaintiffs that defendants have started obstruction to the possession of plaintiffs. It is also contention of plaintiffs that the Forest Department passed the judgment and plaintiff No.5 has encroached over 29 ares of land of Forest Department. Plaintiffs have approached towards the defendants and requested to measure the land through TILR office,

Soygaon, but defendants not allow to measure the land.

07. It appears from the claim clause of plaint that it is alleged by the plaintiff that, defendants have encroached over the large area of land of plaintiffs. They have filed on record rough map annexed with the plaint from which *prima facie*, the possibility of encroachment committed by the defendants can not be ruled out. In my opinion, if joint measurement is carried out no prejudice will be caused to the defendants. More so, in matter of encroachment, it is always desirable to carry out joint measurement of lands of plaintiffs and defendants at the hands of expert. It will not for the collection of evidence as submitted by defendants.

08. It is specific contention of plaintiffs in Para-5 of plaint that defendants have illegally possessed their land. Therefore, it will proper to carry out joint measurement. Hence, I pass the following order:-

ORDER

- 1} TILR Soygaon is hereby appointed as Court Commissioner to carry out joint measurement of land of plaintiffs and defendants in Gut No.-26, Gut No.-27 and land in Gut No.-29 of village Uppalkheda-Antur, Tal. Soygaon, Dist. Aurangabad.
- 2} Plaintiffs are directed to deposit expenses for carrying out joint measurement, within period of seven days from this order.

- 3} Plaintiffs are also directed to furnish necessary documents to TILR Soygaon for carrying out joint measurement.
- 4} TILR Soygaon is hereby directed to carry out joint measurement of above mentioned Gut numbers of land of plaintiffs and lands of defendants and show exact portion of encroachment, if any, committed by defendants over the land of plaintiffs, if any and submit report within one month from the date of measurement.
- 5} Plaintiffs are directed to file on record the document showing that they have deposited the expenses of measurement.
- 6} TILR Soygaon is also directed to furnish two extra copies of measurement with original.
- 7} Issue Letter to TILR Soygaon accordingly.

Date :- 17.03.2023.

[A. B. Ingole]
Civil Judge, Jr. Division,
Soygaon.

CERTIFICATE

“I affirm that the contents of this [P.D.F.](#) file Order are same word to word, as per original Order”.

Name of Stenographer	:-	K. P. Dusane.
Court	:-	C.J.J.D. & J.M.F.C., Soygaon.
Date	:-	17.03.2023.
Order signed by presiding Officer on	:-	17.03.2023.
Order uploaded on	:-	18.03.2023.