

MHBI080002932011



R. C.S. No. 234/2011
Mahadu Vs. Shesherao & ors.

ORDER BELOW EXH.92

This is an application filed on behalf of plaintiff with seeking prayer to appoint the court commissioner i.e. Deputy Superintendent of Land Record, Majalgaon for carrying out measurement of suit property with directions to point out encroached portion alleged to have occupied by the defendants by different colours etc..

2. The plaintiff submits that, the suit is instituted for declaration of title, recovery of encroached portion of 2 Guntha area out of suit property from defendant Nos.2/अ to 2/क (legal heirs of deceased defendant No.2) with consequential relief of permanent injunction etc.. The subject matter of the suit is agricultural land Gat No.572 admeasuring 1 H. 38 R, as described in plaint paragraph No.2. According to him, the aforesaid defendants have made encroachment over 2 Gunthas portion of suit land from southern side by demolishing common boundary. The said fact regarding making the illegal encroachment needs to be brought on record. Thus, the suit property requires to be measured through the said Government authority with direction to submit report alongwith measurement map with the specification regarding encroached portion etc.. As such, the plaintiff has urged to allow application.

3. The defendants have opposed the application by filling say on leaflet itself through their learned Advocate. They submit that, the similar application (Exh.25) filed by the plaintiff under

Order VI, Rule 9 of the Code of Civil Procedure, 1908 (hereinafter “the Code”) has been rejected by this court on 29.03.2014. The learned Advocates for both sides have knowledge about the said fact. Subsequently, the plaintiff has carried out amendment in the plaint pleadings and filed instant application. Thus, they urged to reject application with compensatory costs of Rs.5000/-.

4. Heard the learned Advocate Shri A. M. Kulkarni for the plaintiff and Shri P. T. Taur, for the defendants, at length. They argued almost all the facts, which are pleaded by their respective parties, as mentioned supra.

5. Perused application, say and record of the case, minutely. The contents of application are supported by an affidavit of plaintiff viz., Mahadu Vishwanath Jadhav vide Exh.93. I have given thoughtful circumstances towards an argument advanced by the learned Advocates for both sides. No doubt, the similar application (Exh.25) filed on behalf of the plaintiff, has been rejected by this court on 29.03.2014. However, the record shows that, the plaintiff has subsequently carried out amendment in the plaint pleadings with the permission of the court vide order passed below Exh.71 on 19.07.2019 and thereby introduced additional plaint pleadings that, defendant No.1 sold out the land to defendant No.2/C by way of registered sale-deed and thereafter, legal heirs of deceased defendant No. 2 (defendant Nos.2/अ to 2/क) have unlawfully made encroachment over his suit land 2 Gunthe portion during pendency of the suit.

6. It is well settled that, in the civil suit wherein the party making allegation against other side that, the illegal encroachment made over the suit land or likewise if there is dispute between the

parties regarding the boundaries, then its always desirable to appoint the court commissioner for inspection of suit site to ascertain such fact. At the same time, it is also well settled that, the court commissioner cannot be appointed for collection of evidence. For brevity purpose, I would like to reproduce the provision of Order XXVI, Rule 9 of the Code, which runs as under:

In any suit in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market value of any property, or the amount of any mesne profits or damages or annual net profits, the Court may issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon to the Court.

7. Needless to say that, in terms of aforesaid procedural law, said Government authority is competent to carry out local investigation of the suit property and adjoining concern landed properties for carrying out the measurement to ascertain factum regarding alleged encroachment over the subject matter of the suit. In given circumstances, the present application is found tenable on being alleged substantial event took place during pendency of the suit regarding alleged encroachment carried by the said defendants, if any.

8. In view of foregoing discussion, the application deserves to be allowed. The Deputy Superintendent of Land Record, Majalgaon or its subordinate competent officer requires to be appointed as a court commissioner for carrying out measurement suit land Gut No.572 and adjoining concern land belongs to other, if any. Obviously, the plaintiff has to bear fees and charges of the measurement under order on being voluntarily sought for the same. In the result, I pass the following order.

ORDER

- 1) The application (Exh.92) is allowed.
- 2) The Deputy Superintendent of Land Record, Majalgaon or its subordinate officer is hereby appointed as a Court Commissioner for carrying out measurement of entire portion of Gut No.572 and adjoining concern agricultural land area belongs to other, if any under Order XXVI, Rule 9 of the Code of Civil Procedure, 1908.
- 3) The court commissioner shall give intimation in advanced to the plaintiff, the defendants and other concerned adjoining land holders about the date fixed for carrying out measurement by issue notice in writing.
- 4) The court commissioner shall prepare measurement map and specifically pointed out encroached portion of land, if found possessed either party to the suit or otherwise.
- 5) The plaintiff shall deposit measurement fees and incidental charges with the office of the court commissioner within 15 days from today and report the compliance in writing.
- 6) The court commissioner shall submit its report with measurement map and other relevant documents within next two months, unless the time extended by the court.
- 7) Issue commission writ, accordingly.
- 8) The costs in main cause.

sd/-

(S. S. Budruk)

Date :- 27/06/2025.

Civil Judge Senior Division, Majalgaon.