



ORDER BELOW EXH.82

Under this application, the plaintiffs have urged to call report of Court Commissioner Advocate Shri. S. C. Sharma, regarding surface level of suit agricultural lands Gat No.17 to 22 either higher or lower side, as the case may be.

2. Contesting defendant No.2 has opposed application by filing say on leaflet itself. He submits that, the application is filed for prolonging the suit. The Court Commissioner has already placed on record his report by making inspection of the suit site as per directions given by the court vide Exh.48. The contents made in para No.2 of this application were not mentioned in the application (Exh.48), by which the Court Commissioner was appointed. The application is not tenable. Thus, he urged to reject the application with compensatory cost of Rs.10,000/-.

3. Remaining defendants have failed to file their say on this application, though reasonable time given. Thus, the application is proceeded without say against them.

4. Heard, learned advocate Mr. B. R. Dak for the plaintiffs and Mr. V. S. Joshi for defendant No.2, at length. Perused the application, say and record of the case, minutely. The contents of application are supported by an affidavit of plaintiff No.1 namely Madhukar Uttamrao Dhirde vide Exh.83.

5. It is matter of record, the learned advocate Mr. S. C. Sharma was appointed as a Court Commissioner at the instance of plaintiffs vide order passed below Exh.48 on 10/01/2023. The said application was filed under Order-XXXIX, Rule-7 of the Code of Civil Procedure, 1908. It is also matter of record, the Court Commissioner has already placed on record his report at Exh.74 alongwith rough sketch map indicating location of respective those suit agricultural lands, copy of notices issued to the respective parties by the Court Commissioner on 15/03/2023 communicating date of his visit to suit site, a copy of letter issued by learned advocate for plaintiffs to Court Commissioner for postpone the date of visit to suit site and panchanama carried by him on spot in presence of parties as on 22/03/2023.

6. It is not disputed by the learned advocates for both parties that, the court had not given directions to the Court Commissioner for mentioning measurement of particulars of surface level area of those suit properties either at higher or lower side, as the case may be while passing order below Exh.48 dated 10/01/2023. It is significant to note that, the parties to the suit including the plaintiffs have not raised objection on Court Commissioner's report (Exh.74) including additional report annexd with Exh.75, though specific order passed there on 01/04/2023 and 12/04/2023 respectively. Instead of that, the plaintiffs have filed present application. Even otherwise, the

factual matrix regarding the geographical area or surface level of those suit properties is a matter of consideration on merit. It can be taken in to consideration on merit, if the parties have brought on record material to that effect while recording evidence. As such, the factual matrix regarding geographical level or surface area within vicinity of those suit properties requires to keep open for consideration on merit, at the time of final argument.

7. In view of forgoing discussion, I do not find any substance in the application. Even, the plaintiffs have alternative remedy to bring on such particulars on record while recording evidence, subject to their plaint pleadings. In such circumstances, there is no question to cause any prejudice to the plaintiffs, if the application is dis-allowed. There is no compelling circumstances to impose compensatory cost against the plaintiffs, as urged on behalf of defendant No.2. So, the application will have to be rejected. In the result, I pass the following order.

ORDER

- 1] The application (Exh.82) is rejected.
- 2] The costs in main cause.

Sd/-

(S. S. Budruk)

Civil Judge Senior Division,
Majalgaon.

Date : 16.06.2025.

CERTIFICATE

The contents of above order is word to word correct
in this pdf.

Dictated on : 16/06/2025.

Typed on : 16/06/2025.

uploaded on : 16/06/2025.

Sd/-
(H.B.Suryawanshi)
Steno-Gr.II
C.J.S.D. Majalgaon.