

MHBU08001486-2022

R.C.S. No. 91-2022  
Subhash Vs. Jagannath

**ORDER BELOW EXH.46**  
(Passed on 16.12.2024)

This is an application filed by plaintiff under Order XXVI Rule 9 of the Code of Civil Procedure, for re-appointment of Cadastral Surveyor of Land Records, Nandura as Court Commissioner.

**2.** It is asserted that instant suit has been brought by plaintiff seeking removal of encroachment and possession of encroached area. It is the case of plaintiff that, defendant has committed encroachment on the suit property as well as on Government road by raising construction. Said Government road is situated towards eastern side of suit property. During previous measurement, the concern Court Commissioner had not measured the Government road and property of defendant despite of direction for joint measurement. The report and map submitted by him is not in accordance with the directions given. In order to bring on record the exact position and for asserting the encroachment, it is necessary that Court Commissioner be re-appointed for the purpose of carrying out joint measurement with specific direction to measure the Government road.

**3.** Learned advocate of the defendant filed his say on back leaf the application and thereby opposed. It is contended that the report of previously appointed Court commissioner goes against the case of plaintiff and therefore instant application for calling upon another report is filed. This application is not maintainable and hence it be rejected.

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4. I have heard learned advocate Shri. Tarkase for plaintiff and learned advocate Shri. Nimkarde for the defendant. They argued in terms of their averments made in application and say respectively.

5. Perused record. This is a suit for mandatory injunction and declaration. At the outset it is necessary to note here that, vide order dated 09.07.2024 passed below Exh.42 the Cadastral Surveyor of Land Records Nandura was appointed as Court Commissioner to conduct joint measurement of the land belonging to plaintiff and defendant in Nazul Sheet no.4. He was directed to submit its report and map regarding encroachment (if any) over suit property and submit report on factual position. The report and map of previous measurement apparently shows that despite of specific direction to conduct the joint measurement of property of defendant and plaintiff i.e. plot no.622 and 604, only plot no.622 was measured. Further, The map so filed on record *prima facie* shows that the location of Government road and whether there is any encroachment on that Government road and suit property of plaintiff situated in plot no.622 has not at all been disclosed. Further, despite of specific direction, the measurer has not even measured plot no.604. The dispute involved in this matter is regarding encroachment allegedly committed by defendant on the property of plaintiff and Government road. It is an admitted position that, towards the eastern side of suit property there is Government road and adjacent to said road towards eastern side there is property of the defendant. Hence, considering such facts of this matter, I hold that, in order to bring exact and correct position of the properties and encroachment (if any) on

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record, it is necessary to order re-measurement by appointing a fresh Court commissioner for the purpose of joint measurement of plot no.622 and 604 and Government road which alleged to have situated towards eastern side of plot no.622.

6. In this matter, the evidence of defendant is yet to be commence. Thus, I am of the view that, no prejudice will be caused to the defendant since he will have ample opportunity to adduced evidence either in favor or against the possible report of the Court commissioner. Hence, I conclude that for proper adjudication of the matter in right perspective, re-appointment of fresh Court commissioner for the purpose of joint measurement is necessitated in this case.

7. In the result I pass following order.

**ORDER**

1. Application is allowed.
2. The T.I.L.R. of Nandura is hereby appointed as Court Commissioner to conduct a fresh joint measurement of the land belonging to plaintiff and defendant in Nazul sheet No. 4 i.e. plot No. **622 and 604 and the Government road situated towards eastern side of plot no.622** situated at mauje Chandurbiswa, Tq. Nandura, Dist. Buldana and file report containing map as well as factual position over the suit property regarding whether there is encroachment on plot no.622 and the Government road, if yes to what extent and from which side and by whom the encroachment appears to have been made in view of Order XXVI Rule 9 of Code of Civil Procedure, 1908.
3. The learned Court Commissioner is directed to go through the pleadings in the suit and prepare report.

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4. The plaintiff and defendant to remain present on the suit property on the date of joint measurement along with necessary documents.
5. Plaintiff to deposit commissions fees for joint measurement in the office of Land Record, Nandura as per rules.
6. The court commissioner shall file report and map in the court on or before 17/02/2025.
7. On compliance writ be issued.

Date :- 16.12.2024.

[**Megha D. Dajjuka**]  
Joint Civil Judge Junior Division, Nandura.

“I affirm that the contents of this P.D.F. file Order are same word for word as per original Order.

Name of the Steno	:-	M.G.Deshpande
Name of the Court	:-	Jt.Civil Judge J.D., Nandura
Date of Order uploaded	:-	16.12.2024