

MHBU100016872020



RCS No. 24/2020  
Dnyandeo Waghode Vs.  
Balkrishna Rane

**Order below Exh. 52**

Perused the application and she filed.

2. Heard the learned counsel for the plaintiff and the learned counsel for the defendant.

3. This is an application filed by the plaintiff for appointment of Court Commissioner under Order XXVI Rule 9 read with section 151 of the Code of Civil Procedure. It is the contention of the plaintiff that the suit is filed by the plaintiff against the defendant for possession of an encroached portion 16 Ares. It is contended that earlier, the plaintiff got measured his land Gut number 119 on 19 March 2019 and on the basis of the same, this suit has been filed. The defendant by filing his Written Statement has denied the legality of the said measurement done on 19 March 2019. The plaintiff has also examined Shri P. P. Kulkarni, Surveyor. The plaintiff is likely to suffer because of the mistakes committed by the Surveyor. Therefore, the plaintiff desires to measure the Gut numbers 119 and 121 jointly through Taluka Inspector Land Record, Malkapur as Court Commissioner through Court. Therefore, the plaintiff has filed this application.

4. The application is opposed by the defendant with their say at Exhibit 53. The defendant admitted that he has challenged the measurement done on 19 March 2018. It is contended that in fact, the Surveyor has illegally and falsely prepared the map and wrongly fixed the marks. Therefore, the measurement is illegal. In the circumstances, the Court Commissioner cannot be appointed for collecting evidence. Therefore, the defendant prayed for rejection of the application.

5. In *Rambhau and others Vs. Balabhau and others*; 2020(2) ALL MR 555, relied upon by the learned Counsel for the plaintiff, it has been held by Hon'ble Bombay High Court that Court Commissioner ought to have been appointed for joint measurement in a suit for possession of encroached portion.

6. In *Shyam Janardan Choudhary Vs. Asha Ramdas Katkar*; 2014(6) Bom.C.R. 576, relied upon by the learned Counsel for the plaintiff, it has been held by Hon'ble Bombay High Court that it is necessary and desirable for the Court to appoint city surveyor in respect of property falling within city limits or Taluka Inspector or District Inspector of Land Records as Commissioner for measurement and preparing authentic map.

7. In *Deorao Punjabrao Mohod Vs. Janardhan Dhondbaji Mankar*; 2014(6) ALL M.R. 696, relied upon by the learned Counsel for the plaintiff, it has been held by Hon'ble Bombay High Court that in cases of boundary disputes or boundary marks, desired map needs to be prepared through Officials of Government preferably as Court Commissioner so that measurement maps are prepared authentically and brought before the Court so as to decide real controversy between the parties.

8. I have taken into consideration the ratio of these decisions cited by the learned Counsel for the plaintiff while deciding this application.

9. In *Kashinath Chindhuji Shastri Vs. Haribhau Natthuji Bawanthade*; 2004(2) Mh.L.J. 722, the Hon'ble Bombay High court held that, whenever the dispute is about the encroachment or dimension of the site, the Court commissioner must be appointment by the court to take joint measurements. Therefore, considering this decision and the decisions cited supra by the learned Counsel for the plaintiff, the application of the plaintiff is liable to be allowed.

10. The suit is filed for recovery of encroached person. In a suit of this nature, joint measurement of the land of the plaintiff and the defendant is

necessary in order to ascertain the encroached portion of land. The defendant has contended that earlier measurement done on 19 March 2019 is illegal. The plaintiff also contends that he is likely to suffer because of the mistakes committed by the Surveyor while doing measurement of land Gut number 119. Therefore, so as to ascertain the encroached portion of the land, joint measurement of both the land gut numbers 119 and 121 becomes necessary so as to find out the encroachment. In a suit for ascertaining the encroached portion of land and its recovery, as said earlier, appointment of Court Commissioner to ascertain the encroached portion of land is necessary and legal. Therefore, the application deserves to be allowed, though there is earlier measurement plan on record. In the result, following order is passed:

**ORDER**

1. The application is allowed.
2. Taluka Inspector Land Records, Malkapur is appointed as a Court Commissioner.
3. The Court Commissioner is directed to jointly measure the lands Gut numbers 119 and 121 situated at village Jambhuldhaba, Tal Malkapur, Dist. Buldhana.
4. The Court Commissioner shall issue notices to the adjoining land holders and both the parties prior to commencing the measurement work.
5. The fees of the Court Commissioner shall be borne by the plaintiff.
6. The Court Commissioner is directed to submit his report within a period of two months.

Date : 03/08/2023.

(S. M. Aher)  
2<sup>nd</sup> Jt. Civil Judge, J.D., Malkapur

Certificate

I affirm that, the contents of this PDF file Order/Judgment are same word to word, as per original Order/Judgment.

Name of Stenographer	:	S.R.Khadke.
Court	:	2nd Jt. CJJD & JMFC, Malkapur.
Judgment/Order signed :		04/08/2023
by the presiding officer	:	
Judgment/Order	:	04/08/2023
uploaded on	:	