

MHBU13000873-2017**Anil & others vs. Sau. Chhaya.****Order Below Exh. 22 in R.C.S.No. 63/2017.****(Dated 5th March, 2021)**

Present application has been filed by defendant under Order XXVI Rule 9 of the C.P.C.,1908 thereby praying for appointing Dy. S. L. R., Chikhli as Court Commissioner for conducting joint measurement of agricultural lands of plaintiffs and defendant out of Gut Nos.100 and 101 respectively situated at mouza Ambashi, Tq. Chikhli, Distt. Buldana and directing said Court Commissioner to fix boundary marks after joint measurement and to submit measurement report showing therein the encroachment, if any.

- 2) Perused application, say of plaintiffs and documents on record. Also heard learned Advocates for the plaintiffs and defendant.
- 3) Learned Advocate for defendant has submitted that plaintiffs have filed present suit for possession of encroached land. The land of plaintiffs is situated in Gut No.100 and the land of defendant is situated in Gut No.101. The defendant has purchased her agricultural land out of Gut No.101 by registered sale deed dated 31/7/2003 from Vimalbai Deshmukh and since then defendant has been in cultivating possession of her land. It is further submitted that plaintiffs have mentioned in their plaint that there was a East-West boundary in between the fields of plaintiffs and defendant and in the year 2011, the defendant started making encroachment upon the Southern side of plaintiffs' land by breaking said common boundary.
- 4) However, defendant has neither broken any boundary nor she

has encroached upon the land of plaintiffs. It is further submitted that the plaintiffs have mentioned in their plaint that on 24/5/2016, they have measured their land in Gut No.100 through Government measurer and in said measurement, it has been found that the defendant has encroached upon the land of plaintiffs to the extent of 49R. However, it appears that said measurement was not conducted jointly by measuring the lands of plaintiffs and defendant. As such, said measurement is not legal. Therefore, it is necessary to appoint Dy. S.L.R., Chikhli as a court commissioner for conducting joint measurement of lands of plaintiffs and defendant in aforesaid Gut numbers in order to adjudicate the controversy full and final and to bring the factual position before court. Hence, learned Advocate for defendant has prayed for grant of this application by appointing Dy.S.L.R., Chikhli as Court Commissioner for holding joint measurement as prayed.

5) On the contrary, it appears from the say of plaintiffs at Exh.24 that they have not strongly objected to this application. Learned Advocate for plaintiffs has submitted that if the T.I.L.R., Chikhli is appointed as a court commissioner for joint measurement of lands in Gut Nos. 100 and 101 respectively then the lands be measured at the costs of defendant. It is further submitted that court commissioner be directed to show the encroachment towards whom it is found.

6) Following points arise for my determination, I have recorded my findings thereon for the reasons discussed below.

<u>Sr. No.</u>	<u>Points</u>	<u>Findings</u>
1)	Whether it is necessary to appoint Dy.S.L.R. Chikhli as Court Commissioner for joint measurement as prayed ?	In the affirmative.

2) What order ?

Application is allowed.

REASONS

As to point No. 1 :-

7) I have perused record of the matter and also taken into consideration the submissions of learned Advocate of plaintiffs and defendant. From the record, it reveals that there is a dispute between parties regarding encroachment and identity of boundaries of lands in Gut Nos.100 and 101 respectively as the present suit is filed for recovery of possession of encroached land. Present application is filed to appoint Dy.S.L.R. Chikhli as Court Commissioner for holding joint measurement of lands belonging to plaintiffs and defendant situated in Gut Nos. 100 and 101 respectively of mouza Ambashi, Tq. Chikhli, Distt. Buldana. This application is not strongly opposed by plaintiffs and they are ready for joint measurement of above said lands but at the costs of defendant.

8) Thus, I think that it is necessary to hold joint measurement of lands of plaintiffs and defendant so that the measurement map will come on record. The suit itself having filed for possession of encroached land, if Court Commissioner is appointed for joint measurement and measurement map is produced on record then it will clear as to whether there is any encroachment or not as alleged by plaintiffs. Further, it will help this court to decide the real controversy between the parties effectively. Thus, I think it just and proper to allow this application. Hence, I answer to point No.1 in the affirmative.

As to point No. 2 :-

9) Considering all these aspects, I am of the opinion that, the

application deserves to be allowed. Therefore, I proceed to pass following order.

ORDER

1. Dy. S.L.R., Chikhli is hereby appointed as a Court Commissioner to conduct joint measurement of the lands of plaintiffs and defendant out of Gut Nos.100 and 101 respectively situated at village Ambashi, Tq. Chikhli ,Dist Buldana and also to submit the joint measurement map and report showing therein the alleged encroachment, if any, to this court within two months.
- 2) Defendant is hereby directed to deposit the necessary fees of measurement in the office of Dy.S..L.R., Chikhli directly, as per rules and to provide the revenue record to the court commissioner, if required.
- 3) Parties to the suit appear before Court Commissioner as and when directed and co-operate to the Court Commissioner.
- 4) Copy of writ be forwarded to Court Commissioner on P.F.

Date: 05/03/2021

(S.W. Thombre)
Civil Judge, Junior Division,
Chikhli.

Certificate

I B.B.Theng, Stenographer to J.M.F.C. Chikhli affirm that, the content of this PDF judgment file is the same as per the original judgment.