

ORDER BELOW EXH.06

Dated 18.10.2022

1. Plaintiff has filed present application under Order 26 Rule 9 of the Code of Civil Procedure, 1908 (for short CPC). Plaintiff has prayed for appointment of Government Cadastral Surveyor as Court Commissioner for measurement of suit land and for calling his report on the point of encroachment.
2. Plaintiff has filed present suit for measurement of agricultural land and for fixing boundaries and recovery of encroached land adm.0 H 40 R land out of land adm.0 H 85 R of plaintiff situated in Gut no.75 at village Kolhigawali, Tq.Motala (for short "suit property").
3. Summonses duly served on defendant nos.1 to 4 at Exh.7/D to 10/D. But they did not appear before the Court. By order dt.13.06.2022 passed below Exh.1 suit is proceeded ex-parte against defendant nos.1 to 4. Defendant no.5 has filed his written statement at Exh.17 and admitted the claim of plaintiff. Defendant no.6 has filed pursis Exh.18 and adopted written statement filed by defendant no.5 at Exh.17.
4. Defendant no.6 has filed say on present application and given no objection to measure the suit property including his share.
5. In short, the suit and present application is uncontested. However, before passing any order on present application, it is necessary to ascertain whether the application can be allowed within legal parameters. As pointed out earlier, the plaintiff has filed present suit for removal of encroachment allegedly made by defendant no.1 over 0 H 40 R land of plaintiff. For finally adjudicating the claim of plaintiff, it is necessary to measure the land through Cadastral Surveyor and to find out whether any encroachment is committed by defendant no.1 or any of the defendants over the suit land.

6. Without the help of Cadastral Surveyor, the issue of encroachment cannot be decided. No prejudice is likely to cause to defendants, if Court Commissioner is appointed for measurement of suit land and to call his report on the point of encroachment, if any. Hence, order.

ORDER.

1. The application is allowed.
2. Dy. Superintendent of Land Record, Motala is appointed as a Court Commissioner for measurement of entire land situated in gut no.75 at Village Kolhigawai, Tq. Motala Dist. Buldana and to report on following points.
 - i) Whether any encroachment is made on plaintiff's land ?
 - iii) Whether any boundary marks/broken boundary marks are found on suit land ?
3. Plaintiff shall deposit necessary fees and charges for measurement of land within two weeks from today.
4. Plaintiff shall furnish copies of relevant documents to Court Commissioner before measurement of his land.
5. Copy of present application with order be furnished to Court Commissioner.
6. Court Commissioner shall submit its detail report within one month from payment of government charges of measurement and furnishing copies of documents by plaintiff.

Date : 18.10.2022.

(S.P.Pandav)
Civil Judge, Jr.Div., Motala.