

MHBU160003412022



Order below Exh.-25 in R.C.S. No. 37/2022
Balu Vs. Martandrao & Ors.

1. Present application is moved by the plaintiff thereby prayed to appoint Court Commissioner again for joint measurement of entire gat no. 75.
2. The defendants failed to file their say despite of sufficient opportunities. Hence, matter be proceeded without say of the defendants.
3. Ld. Adv. S.T. Pradhan for plaintiff submitted that the plaintiff instituted present suit for declaration, demarcation, removal of encroachment and recovery of possession. The agricultural lands of plaintiff and defendants are located in gat no. 75 ad-measuring 8 H. 58 R. + pot kharab ad-measuring 01 R. In present matter, this Court appointed Court Commissioner. The Court Commissioner filed his report along-with map. However, the Court Commissioner did not show encroachment on agricultural land of plaintiff. Thus, the measurement carried out by Court Commissioner is not helpful for the plaintiff to prove his case. Hence, it is necessary and required to appoint Court Commissioner again to carry out measurement of entire gat no. 75. He further submitted that the plaintiff is ready to

pay measurement charges. Moreover, no prejudice will be caused to the defendants if present application is allowed. With this, he prayed to allow present application.

4. The defendants failed to argue on present application despite of sufficient opportunities. Hence, matter be proceeded without argument of remaining defendants.
5. Perused the application. Heard Ld. Adv. S.T. Pradhan. I have also gone through record.
6. The plaintiff moved present application to appoint Court Commissioner. Therefore, I have gone through Section 75 and Order XXVI of Civil Procedure Code. It gives discretion to the Court to appoint Court Commissioner in appropriate case. It is settled position of law that whenever discretion is provided to the Court then it should be exercised in judicial manner.
7. Admittedly, the plaintiff instituted present suit for declaration, demarcation, removal of encroachment and recovery of possession. Perusal of record shows that the plaintiff moved an application (Exh.6) thereby prayed to appoint Court Commissioner. Said application was allowed by this Court. Accordingly, the concern surveyor filed map in present matter. Perusal of said map reveals that whole gat no. 75 was measured by Government agency i.e. Dy.S.L.R. Despite of it, the plaintiff again moved present application. The plaintiff submitted that Court commissioner needs to be appointed as

the concern surveyor did not show encroachment. I considered said submission. The concern surveyor specifically mentioned in measurement dt. 25/05/2023 that the plaintiff is not having possession over agricultural land bearing gat no. 75. Thus, it appears that the plaintiff is not having possession over the suit property. Hence, I am of the opinion that Court commissioner can not be appointed again and again unless there is sufficient material on record which creates doubt about the earlier measurement map. Therefore, I am of the opinion that it is not proper to appoint court commissioner in present case.

8. In view of aforesaid discussion, I am of the opinion that present application is devoid of merit and liable to be rejected with costs. Hence, I pass following order.

Order

- 1 The application is rejected with costs.
- 2 Cost-in-cause.

Date:- 26/11/2025

Place:- Motala.

(Satishkumar Shripatrao Gaikwad)
Jt. Civil Judge Jr. Div.,
Motala, Distt. Buldana.