



**CNR No. MHBU19000**

**Order Below Exh.06 in R.C.S. No. 65/2020**

This is an application filed by the plaintiffs praying for appointment of the Court Commissioner.

2. Heard learned advocate Shri. R.P. Thosare for the plaintiffs and learned advocate Shri. R.L. Mangalvedhe for the defendant no.2. Perused the application and say filed in reply to it. Perused the record of the case.

3. In short, it is submitted on behalf of the plaintiffs that they and the defendants are relatives of one another. The landed property bearing block no.65 admeasuring 2 H – 76 R situated at village Pimpalgaon Sonara, Tq-Sindkhed Raja was their ancestral joint family property. The said landed property was partitioned amongst the parties. They had taken possession of their respective shares which were situated adjacent to one other.

4. It is alleged by the plaintiffs since two years the defendants have encroached upon their lands from eastern and western directions to the extent of 0 H – 28 R and 0 H – 10 R. As the parties originally belonged to the same family, in order to

avoid disputes, the plaintiff no.1 applied to the office of Dy. Superintendent of Land Records, Sindkhed Raja for measurement of pot hissas within block no.65. It was agreed between the parties that as per measurements the boundaries of pot hissas would be fixed and if any encroachments are found those portions of lands would be amicably restored to the concerned.

5. It is submitted that as per measurements, certain portions of lands in excess to their shares were found to be in possession of the defendants. However, the defendants refused to restore those portions of lands. Due to the resistance offered by defendants exact extent of encroachment made by them individually was not recorded in the map and report. Therefore, the plaintiffs failed to receive the encroached portions of their lands. Upon their request to the Dy. Superintendent of Land Records, Sindkhed Raja for measurement of pot hissas and fixation of boundaries, the said authority asked them to approach the court. Therefore, it is necessary that the Dy. Superintendent of Land Records, Sindkhed Raja is appointed as a court commissioner for measurement of pot hissas and fixation of boundaries of the respective shares of parties. It is further submitted that the plaintiffs are ready to pay the necessary fees for appointment of Court Commissioner. Hence, it is prayed the application may be allowed.

6. The suit is proceeding ex-parte against the defendants no.1 and 4. The present application is proceeding

without say of the defendant no.3. However, it is contended by the defendant no.2 that the defendants have sold the suit properties. They are not in possession of those properties. Hence, the application may be rejected.

7. The suit is for fixation of boundaries, removal of encroachment and recovery of encroached portions of immovable properties. Therefore, well ascertained boundaries of the suit properties and shares of the defendants is a crucial aspect in the present matter. A perusal of measurement map at Exh.3/4 would reveal that the plaintiffs were found to be in possession of lands lesser than their respective shares in the landed property bearing block no.65. On the other hand, the defendants were found to be in possession of lands in excess to their respective shares in the said landed property. Though, the said measurement map (Exh.3/4) reveals the portions occupied by the parties, it does not reveals the ascertained boundaries of the pot hissas i.e. shares of parties as per revenue records. It also does not depicts the exact extent of alleged encroachment by mention of its location and dimensions.

8. Under such circumstances, it would be desirable to appoint the Dy. Superintendent of Land Records, Sindkhed Raja as a court commissioner and to direct him to carry out measurements of the pot hissas within the aforesaid landed property i.e. block no.65, so as to ascertain the boundaries of those pot hissas and the exact location and extent of alleged encroachment, if any, made by the defendants. The appointment

of Court Commissioner for such purpose would not amount to collection of evidence through the said authority. Also, such appointment would not be prejudicial to the defendants, as they would have an opportunity to cross-examine the Court Commissioner, if they desire to do so. Hence, for the aforesaid reasons, following order is passed :-

**:- ORDER :-**

- i) The application is allowed.
- ii) The Dy. Superintendent of Land Records, Sindkhed Raja is hereby appointed as a Court Commissioner.
- iii) The Court Commissioner is directed to conduct local investigation with respect to the pot hissas within the landed property bearing block No.65 situated at village Pimpalgaon Sonara, Tal-Sindkhed Raja, Dist-Buldhana.
- iv) The Court Commissioner is further directed to submit to this court a complete and detailed report along with an accurate measurement map, showing all factual aspects of the aforesaid pot hissas; such as, but not limited to their boundaries, their areas, their dimensions and the exact location and extent of encroachments, if

any, made upon them etc..

- v) The Court Commissioner is directed to carry out commission work, as aforesaid, only after giving proper notices to the plaintiffs, the defendants and the owners of adjoining lands of the aforesaid landed property and by following due process of law in that respect.
- vi) The plaintiffs are directed to forthwith deposit necessary fees for Court Commission at the concerned office and to file an affidavit before this court to that effect on or before next date.
- vii) The Court Commission writ alongwith necessary documents be sent to the Dy. Superintendent of Land Records, Sindkhed Raja accordingly.
- viii) The Court Commissioner is directed to submit his report to this court within a period of two months from the date of receipt of the Court Commission writ, unless the said period is extended by this court.

**Sd/-**

Place : Sindkhed Raja  
Date : 06/05/2023

(Aditya G. Naik)  
Civil Judge Junior Division,  
Sindkhed Raja.

**CERTIFICATE**

It is certified that the contents of the present PDF file are true and correct as per the original signed order/judgment.

Name of stenographer : Dattatray M. Mirge

Name of Court : Civil & Criminal Court, Sindkhed Raja.

Date : 09/05/2023