

MHGO040000352013

RCS No. 09/2013

Tulendra Digamber Katre and Ors.

Vs.

Mustaq Ishaq Sheikh

ORDER BELOW EXH. 155

This is an application filed by the plaintiff for issuance of direction to the Court Commissioner or Deputy Superintendent of Land Record to find out and calculate the area shown in green colour in the map dated 22/10/2016.

2. The plaintiff contended that the Court Commissioner has conducted joint measurement of Gat no. 112, 114 and 104 of village Risama, Tah. Amgaon, Dist. Gondia on 21/10/2016. The said report is on Exh.141. The surveyor is died on 15/12/2022. The green colour shown in the map is appear to be 45 sq. mtr., however it is not shown the actual area of Gat no. 112 comes in green area. Without such details the dispute between the parties could not be resolved. Therefore, in order to decide real controversy between the parties, it is necessary to give directions to the Deputy Superintendent of Land Record of Amgaon to find out and calculate the actual area of green colour comes within city survey no. 112.

3. The defendant has filed his say and contended that the application is filed with intention to fill up lacuna in the evidence led by the plaintiff. The plaintiff is trying to collect evidence with the help of the Court. Hence, prayed to reject the application.

4. Read the application and say. Heard learned advocates for both parties. Perused the record. It appears that as per the order of the Court, the court commissioner has conducted the joint measurement of Gat no. 112, 114 and 104 situated at village Risama, Tah. Amgaon, Dist. Gondia.

5. Though it is mentioned in the application that the disputed area is shown in the map as in green colour, both learned advocates for both parties fairly submitted that the actual disputed area is shown in blue colour on the map (Exh.141). Therefore, I am going to proceed with the application by considering the blue colour area shown in map (Exh.141).

6. Learned advocate for the plaintiff submitted that the blue colour area on the map is a part and parcel of both Gat no. 112 and 114. He further submitted that the Court Commissioner has not mentioned as to how much area of the portion described as a blue colour comes in Gat no. 112 and how much area comes in Gat no. 114.

7. From perusal of map (Exh.141), it appears that the Court Commissioner has mentioned the blue colour portion admeasuring 45 sq.mtr. The Court Commissioner has mentioned the said area is a disputed land of Gat no. 112 and 114. However, it is not specifically mentioned therein as to how much area of gat no. 112 comes within the blue colour portion and how much area of Gat no. 114 comes within the blue colour portion. The plaintiff has filed the present suit for recovery of encroached portion by way of mandatory injunction. It appears that there is a dispute between

the parties regarding the alleged encroachment upon the property of plaintiff. In order to ascertain the factual aspect of encroachment, My Learned Predecessor has appointed the Court Commissioner to decide the matter effectively. However, from perusal of the map (Exh.141), it appears that the Court Commissioner has not mentioned the exact area of Gat no. 112, which comes under blue colour portion.

8. Learned advocate for the defendant submitted that the plaintiff has tried to fill up lacuna in the oral evidence of plaintiff recorded earlier in the present suit. However, in view of Order XXVI Rule 9 of the Code of Civil Procedure, the local investigation was directed to be conducted by the concerned officer of the land record in order to elucidating the matter in dispute between the parties. If the proper measurement of the blue colour area is not come on record, then it would resulted into confusion regarding alleged encroachment. Accordingly, it would definitely an impediment in deciding the matter in dispute regarding alleged encroachment. On the contrary, if the actual measurement of portion of Gat no. 112, which is under blue portion area come on record, then it would be helpful in elucidating the matter in dispute between the parties.

9. Therefore, it is seen to be proper to direct the concerned officer of land record to verify the map as filed by the Court Commissioner with the original record i.e. A-copy of map and to find out the actual area of Gat no. 112 and 114 which come under blue colour portion shown on the map. However, it is not

required for the concerned officer to remeasure the property. The concerned officer would be able to calculate the area by mentioning the proportionate scale mentioned in the map. Hence, I pass the following order.

ORDER

1. The application is allowed.
2. The concerned officer of Land Record Amgaon is hereby directed to find out the actual area of Gat no. 112 which come under blue colour portion shown on the map with the help of proportionate scale mentioned on the map.
3. The concerned officer is also directed to submit his report within one week from the date of this order.
4. Issue letter to the concerned officer of Land Record Amgaon accordingly.
5. The plaintiff is directed to take necessary steps and provide necessary documents to the concerned department (if necessary).
6. Both parties to bear their own costs.

Place : Amgaon.
Date : 07.10.2025

(Sameer Gopal Gunari)
Civil Judge, Jr. Dn., Amgaon.