

R.C.S No. 20/2021
Sadaram Thakare + 2 Vs.
Tarachand Chaudhari

Order below Exh. 12

- 1) This is an application filed by plaintiffs under Order 26 Rule 9 of Code of Civil Procedure for appointing Dy. S.L.R. as court commissioner to get the measurement and to ascertain exact encroachment area.
- 2) It is the contention of plaintiffs that, after the measurement dated 02.03.2021 defendant handed over the possession of some encroached portion to the plaintiffs but again on dated 31.03.2021 defendant made the encroachment on more suit land, hence for proper adjudication of matter it is necessary to measure the suit land. Wherein Bhumapan No. 11 alongwith land bearing Bhumapan No. 12 owned by the defendant. Hence the present application.
- 3) Sufficiant time and opportunity has given to the defendant to file his say on present application. But defendant failed to file his say on present application. Hence, present application is decided without say of defendant.
- 4) Heard Shri. P. N. Sangidwar, learned advocate for the plaintiffs at length. I have gone through the pleadings of the application.
- 5) It is true that, the court commissioner can not be appointed for the purpose of collecting evidence. But the court commissioner can very well be appointed for local investigation to elucidating the matter in dispute vide order 26 Rule 9 of C.P.C.

Now, it is the well settled law that the cases of boundary dispute and disputes about the identity of land and encroachment, the Court should ordered local investigation under Order 26 Rule 9 of Code of Civil Procedure. However, for this purpose the nature of suit and requirement needs to be considered. In the present case suit is filed for recovery of alleged portion of land in the possession of defendant.

6) The land of plaintiffs and the defendant are adjacent to each other. It is also to be noted that appointment of the court commissioner would not have prejudice the interest of either of party, if at all any party is aggrieved by the report given by the commissioner, an opportunity would have become available to that party to cross examination of commissioner and to point out, how is the conclusion were not correct. Therefore, it appears just and necessary to get measure the suit land bearing Bhumapan No. 11 alongwith land bearing Bhumapan No. 12 owned by defendant situated at Pradhantola to find out the exact alleged encroachment if any and its exact dimention.

7) Thus, in view of the aforesaid legal position, it appears to be absolutely necessary Dy. S. L. R, Sadak Arjuni ought to have been appointing as the question arises in the present suit is, whether any encroachment made or not and fixation of boundaries. It is also proper to make order of joint measurement of plaintiffs and defendant land in order to resolve all the dispute finally. Hence, I pass the following order.

:: ORDER ::

1. The application is allowed.
2. The Dy. S. L. R. Tal. Sadak Arjuni is appointed as

court commissioner to visit and local investigation of the suit land bearing Bhumapan No. 11 alongwith land bearing Bhumapan No. 12 at village Pradhantola, Tal Sadak Arjuni after giving in writing notices in advance to all necessary parties regarding commission work to the above land.

3. The court commissioner is directed to take measurement of the aforesaid land and submit his report along with measurement map indicating exact area, encroached area and boundaries of the aforesaid land, and file report on or before 06.01.2025.
4. Both parties are directed to be present at the time of court commission work.
5. The plaintiffs are directed to deposit requisite commission charges in Dy. S. L. R. Office, Sadak Arjuni for measurement of respective Bhumapan No. and submit the receipt thereof on or before 05/11/2024.
6. Plaintiffs are directed to furnish relevant documents to the court commissioner.
7. Issue commission letter accordingly on P.F.

Date. 05.10.2024

(Dr. Vikram A. Avhad)
Civil Judge Jr. Dn., Sadak Arjuni.

मी प्रमाणीत करतो की, या पीडीएफ फाईलमधील मजकुर व मुळ न्यायनिर्णय मधील मजकुर हा एकसारखाच आहे.

लघुलेखकाचे नाव : आर. डी. भुजाडे
कोर्टाचे नाव : डॉ. वि. अं. आव्हाड,
दिवाणी न्यायाधीश क. स्तर
व प्रथम वर्ग न्यायदंडाधिकारी, सडक अर्जुनी

न्यायनिर्णय/आदेश दिनांक : ०५.१०.२०२४
पिठासीन अधिकारी यांनी सही केलेली तारीख : ०५.१०.२०२४
न्यायनिर्णय/आदेश अपलोड केलेली तारीख : ०५.१०.२०२४