

MHGO060006842021



ORDER BELOW EXH.17
(Passed on 20/03/2024)

This is an application filed by the plaintiffs for the appointment of Court commissioner. Say filed on behalf of the defendants. The plaintiffs have filed instant suit to seek possession of encroached portion of land purportedly carried out by the defendants.

2. The learned advocate for the plaintiffs submitted that plaintiffs are the owner and in possession of Gat no.1476 total admeasuring area 0 H. 89 R. situated at Mouza Navnitpur, Tq, Arjuni/morgaon, Dist. Gondia.

3. He further submitted that the defendants are owner of Gat No. 1389, total admeasuring area 0 H. 81 R. When the plaintiffs measured their land, they found that the defendants encroached on the land of plaintiffs. Therefore, they prayed for joint measurement of Gat No. 1476 and Gat No. 1389 through an expert so as to determine real matter in controversy. Hence, it is prayed that, TILR, Arjuni/morgaon may be appointed as a court commissioner.

4. The learned advocate for the defendant strongly opposed the application and submitted that there is Gat No. 1390, 1391 and 1392 are situated between the land of plaintiffs and defendants. They have never encroached on the plaintiffs land. The plaintiffs falsely filed suit against the defendants only to harass them, therefore, he prayed to reject the application with costs.

5. Heard Shri T. D. Kapgate the learned Advocate for the plaintiffs and Shri G. D. Awachate the learned Advocate for the defendants.

6. In the case of **Shri Bhupendra S/o Bhagwat Turkar Vs. Shri Homraj S/o Zituji Meshram, Reported in 2014 (3) All MR 635**, Hon'ble Bombay High Court held *“cases of boundary disputes are clearly distinguishable in which identity of land, its measurement and area is needed to be consider on basis of authentic evidence and map of land. Where parties do not agree on map on plan, court Commissioner can be appointed to be prepare the map of suit property to assist the Court. In such cases, there is no question of collecting evidence as to possession. In absence of map or plan, even if decree is passed, it would be meaningless as it may remain in executable in absence of authentic map”*.

7. I have given sincere consideration to the rival contention of both the parties. Perused the record and documents filed by the plaintiff. The plaintiff filed on record 7/12 extract of Gat No. 1476. After perusal of this document, it is seen that it is recorded in the name of the plaintiffs. The 7/12 extract of Gat No.1476, prima-facie show the ownership of plaintiffs over the Gat No. 1476.

8. In present case, there is boundary dispute both the parties. It is the case of the plaintiffs that defendants encroached on the land of plaintiffs and they prayed for joint measurement of Gat No. 1476 and Gat No. 1389. But, the land of defendants is not adjacent from the land of the plaintiffs. After relying the case of **Shri Bhupendra S/o Bhagwat Turkar Vs. Shri Homraj S/o Zituji Meshram (Supra)** and all the documents filed by the plaintiffs, in

my view, it is essential to make measurement of the Gat No. 1476 by the appointment of Court commissioner so as to determine real controversy between the parties. Hence, I pass the following order.

Order

1. The application is allowed.
2. TILR, Arjuni/morgaon is hereby appointed as a Court commissioner in the matter.
3. The Court Commissioner is hereby directed to visit to the disputed site and carry out measurement of the suit property i.e Gat No. 1476 total admeasuring area 0 H. 89 R. situated at Mouza Navnitpur, Tq, Arjuni/morgaon, Dist. Gondia, which is in the name of the plaintiffs, with the aid of government records by giving notice in advance to all the concerned. The court commissioner is also at liberty to carry out measurement of adjacent lands, if found necessary.
4. The Court commissioner is hereby also directed to submit detail report along with map describing extent of encroachment, if any, in the suit land on or before 06.06.2024.
5. plaintiff shall bear the expenses for court commissioner, writ be issued accordingly.

Dated 20/03/2024

Sd/-
(N. V. Sahu)
Civil Judge J. D.
Arjuni/morgaon