

ORDER BELOW EXH. 16 IN R.C.S NO. 113/2017.

[Kushiwartabai Vs. Rameshwar & ors]

This is an application filed by the plaintiff for appointment of Court Commissioner to measure the suit property.

2) The plaintiff has submitted that, she owns and possesses Gat no.28, area 1 H. 75 R out of 3 H. 65 R at village Kumbhari. This property has come to her share from her husband through oral partition dated 29.10.1990 and since that she is in possession of the suit property. However, one Vishwanath Govindrao has transferred 0.80 R land from above described property in his name by preparing false and bogus sale deed on dated 14.04.1998. He has also taken mutation entry of the said property in his name vide Ferfar No.397 and only 0.95 R land is remained with the plaintiff. The plaintiff now is in possession of 0.95 R land and said land is also shown in her name in the revenue record.

3) The defendants without having any right or title over the land of the plaintiff started to make encroachment over it and they have made encroachment on the field land of the plaintiff to the extent of 0.20 R land. When the plaintiff tried to obstruct them, they behaved adamantly and did not listen anything. Under such circumstances it is necessary to get measured the suit property with the help of Court Commissioner

so that clear position of the suit property will come on record. Hence, she prayed for appointment of Court Commissioner for measurement of the suit property.

4) On this application, say of the defendants was called by passing order dated 07.12.2017 but, till this date the defendants did not file their say nor oppose the application in any way. Moreover, the present suit is proceeded exparte against defendant Nos.3 and 4 and only defendant No.1 and 2 are contesting the matter.

5) Perused application. Heard learned counsel of the plaintiff.

6) The plaintiff contended that the defendants have made encroachment on 0.20 R land of the suit property. No objection has been raised for appointment of Court Commissioner from the side of the defendants. In order to identify the alleged encroachment the lands of plaintiff and defendants in Gat no.28 is required to be measured from the Cadestral Surveyor.

7) Considering the nature of the suit, I am of the opinion that, the appointment of Court Commissioner is necessary. Application deserves to be allowed. Hence, following order is passed.

ORDER

- (a) Application is allowed.
- (b) D.S.L.R Jafrabad is appointed as the Court Commissioner.
- (c) D.S.L.R Jafrabad is directed to measure the land of the plaintiff and defendants in Gat No.28 of village Kumbhari, Tq. Jafrabad, Dist. Jalna by issuing due notice.
- (d) Plaintiff and defendants shall remain present at the time of measurement.
- (e) D.S.L.R, Jafrabad is further directed to prepare a map of measurement and show encroachment therein, if found any.
- (f) Plaintiff as well as defendant Nos.1 and 2 shall bear the expenses of measurement.
- (g) D.S.L.R., Jafrabad is directed to receive half amount of the measurement fees from the plaintiff and half amount of the measurement fees from defendant Nos.1 and 2.
- (h) D.S.L.R, Jafrabad is further directed to file measurement report immediately after measuring the properties of the plaintiff and the defendants, as directed.
- (i) Issue Commissioner writ accordingly.

Date :- 30/07/2018.

Sd/-
(S.T.Chikane)
Civil Judge (J.D)
Jafrabad.