

Order Below Exh. 05 in RCS 57/2015

01. This is an application filed by the plaintiff under Order 26 Rule 9 of Code of Civil Procedure, 1908 (for short CPC). It is stated that he has filed instant suit to seek possession of encroached portion of land purportedly carried out by the defendants. It is therefore necessary that the suit property be measured through an expert so as to determine real matter in controversy. Hence, it is prayed that TILR, Ghansawangi may be appointed as a Court Commissioner in the matter so as to measure the land with the available records.

02. In answer to the suit summons/notice, defendant no. 3 presented his appearance through an advocate and combated the application by filing his reply at Exh. 22. Besides, defendant nos 1, 2, 4, 13 to 15 have adopted say of defendant no. 3 by filing pursis at Exh. 24. According to contesting defendants, the plaintiff has described improper boundaries of the suit land. Besides, the plaintiff was never in possession of Gut no. 175 and therefore, he has no right to claim injunction as well as measurement of the suit property. The defendants have categorically denied the fact of encroachment as contended by the plaintiff.

03. It is further stated that the plaintiff had applied to the concerned authority to seek measurement of suit land. In furtherance thereto, on 18/06/2012 the Surveyor had visited the spot, however, it was noticed that the plaintiff was indeed in possession of Gut no. 176 instead of Gut no. 175. This particular fact has been suppressed by the plaintiff and therefore, it prayed that the application may be

rejected with cost.

04. Heard Shri. K. G. Bhosale Ld. Advocate for the plaintiff and Shri. R. S. Deshmukh Ld. Advocate for the contesting defendants. Perused the records.

05. At the outset, the plaintiff has come out with the case that he is in possession of 1 H 01 R area of Gut no. 175 situated at Mouje Bodlapuri, Tq. Ghansawangi, Dist. Jalna by virtue of a registered sale deed dated 29/04/1982. In support thereto, he has filed copy of subject deed along with Exh. 04. From its perusal it appears that, the plaintiff has purchased 5 Acre I. e. 2 H 2 R area of Gut no. 175 from Raghunath Rakhamji Kide i. e. erstwhile owner of suit property for a consideration of Rs. 3,000/-. Moreover, as per the averments, plaintiff seems to have acquired additional 2 Acre 21 R area of land which was subsequently given in the share of his brother Janardhan Maroti during partition.

06. Now, the only contention that has been raised against the application is that the plaintiff had earlier applied to the appropriate authority to get measurement of his land, wherein it was revealed that the plaintiff was, in reality, in possession of Gut no. 176 instead of Gut no.175. However, this particular fact seems to have categorically stated by the plaintiff in para 5 of the plaint and therefore, it can not be said that he has suppressed his act of applying for measurement of the suit land.

07. The defendant has filed certified copy of panchnama

dated 18/06/2012, which was carried out by the Surveyor at the time of his visit to the suit side in furtherance to the measurement application filed by the plaintiff. No doubt, their appear substance in the contention of the defendant that the surveyor did not notice possession of plaintiff over the suit land instead he was found in possession of Gut no. 176. However, it is to be noted that, this particular position seems to be contradictory with the registered document of title dated 29/04/1982, wherein it has been clearly stated that the plaintiff has purchased some portion of land in Gut no. 175. Moreover, on the basis of said deed further revenue record have been created in favour of the plaintiff. As such, it would not be proper at this stage to place complete reliance on the panchnama dated 18/06/12, veracity of which is yet to be proved on merits.

08. Needless to state that it is incumbent upon the plaintiff to establish his ownership and possession over the suit land. However, the same will require a lengthy trial and the same can not be looked into at this stage. Moreover, the plaintiff has filed deed of title, which is prima-faci sufficient to fortify the claim of plaintiff about ownership and possession over the suit land. Therefore, it can not be said that the plaintiff is not entitled to ask for measurement of disputed land.

09. As discussed the plaintiff has contended that the defendants have made encroachment on his suit land, which has been categorically denied by the defendants. Therefore, it can be said that the determination of fact and extent of encroachment is the crux of the matter. Under such circumstances it is essential to make

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, Ghansawangi 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 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 the report along with map describing extent of encroachment, if any, in the suit land on or before 16/02/2017.
5. Plaintiff shall bear the expenses of Court Commissioner.
Writ be issued accordingly.

Dt. 13/01/2017

Sd/-
(J. M. Panchal)
Civil Judge (J. D.)
Ghansawangi.