

ORDER BELOW EXH.41

(Passed on 01/09/2022)

This is an application filed by the plaintiff under Order 26 Rule 10 of the Code of civil Procedure, 1908. The plaintiff has filed instant suit to seek possession of encroached portion of land purportedly carried out by the defendants. It is further stated that the plaintiff had applied to the court commissioner to seek measurement of suit land before the Court and said application was allowed by the Court. Thereafter, on 09/06/2017 the court commissioner filed his report along with measurement map.

2) The learned advocated for the plaintiff submitted that the Court commissioner has not done the measurement of the suit property according to the direction given by the Court. He further submitted that the court commissioner has not done the measurement of the suit property according to the 7/12 extract and sale deed of the property. Likewise, the court commissioner has also not mentioned in his report the area occupied by the adjacent land owners and the defendants and whether there is any encroachment or not in plaintiff's land. Therefore he prayed that the suit property be again measured through an expert so as to determine real matter in controversy. Hence, it is prayed that, TILR, Ghansawangi may be afresh appointed as a court commissioner.

3) On the other hand the learned advocate for the

defendants submitted that the court commissioner filed his report along with measurement map before the Court. And the Panchnama at Exh.34 and 35 clearly show that the plaintiff is in possession of Gut No.176, therefore, this application is not tenable.

4) Heard Shri. S.J.Wagdare learned Advocate for the plaintiff and Shri R. S. Deshmukh learned Advocate for the defendants. Perused the records.

5) After perusing the record, it is seen that the plaintiff has come out with the case that he is the owner and in possession of 1 H 1 R area of Gut no. 175 situated at Mouza Bodhalapuri , Tq, Ghansawangi, Dist. Jalna by virtue of a registered sale deed dated 29/04/1982. The plaintiff has also filed 7/12 extract of Gut N0.175 and sale deed of suit property in support of his case. These documents prima-facie show claim of plaintiff about the ownership over the suit land.

6) I have also heard arguments of both the parties. Also perused the map and report filed by the court commissioner, 7/12 extract of Gut No.175 and sale deed of suit property. After perusal of these documents, it is clearly seen that the court commissioner has not done the measurement of the suit property according to the 7/12 extract of the suit property. He is only stated in his report that the plaintiff is in possession of Gut No.176. As per the 7/12 extract of Gut No.175, the plaintiff is the

owner of 1 H 1 R area in Gut. No.175. He has also filed the title deed of the suit property. The plaintiff has contended that the defendants have made encroachment on his suit land, which has been categorically denied by the defendants. The commissioner has not mentioned in his report in details about the area occupied by the adjacent land owners and the defendants and whether there is any encroachment or not in the land of the plaintiff?. Therefore, in my view, it is essential to make re measurement of the suit property by the fresh 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 afresh appointed as a Court commissioner in the matter.
3. The Court Commissioner is hereby directed to visit to the disputed site and carry out re-measurement of the suit property i.e Gut no. 175 situated at Mouza Bodhalapuri, Tq, Ghansawangi, Dist. Jalna ad measuring 8H, 93 R to the extent of 1H 1 R which is in the name of the plaintiff, 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

R.C.S. No. 57/2015
Bhagwan Vs. Kushivarta & oths.
CNR: MHJN080002822015

detail report along with map describing extent of encroachment, if any, in the suit land on or before 31.10.2022.

5. plaintiff shall bear the expenses for court commissioner, writ be issued accordingly.

Dated 01/09/2022

(N. V. Sahu)
Jt. Civil Judge J. D.
Ghansawangi