

MHJN080003352019



ORDER BELOW EXH.6
(Passed on 15/03/2023)

This is an application filed by the plaintiff for the appointment of Court commissioner. The plaintiff has filed instant suit to seek possession of encroached portion of land purportedly carried out by the defendants.

2. The learned advocate for the plaintiff submitted that the plaintiff is the owner of 1H 28 R land in Gat No.388 situated at Mouza Machindranath Chincholi, Tq, Ghansawangi, Dist. Jalna. He further submitted that the land of the plaintiff is divided in two parts The first part of the plaintiff's land admeasuring 01 H 0R which is bounded by :

- To the East – Matsyodari School,
- To the West – Government Road,
- To the South - land of Trimbak Hemake
- To the North - land of defendant No.1.

And the second part of the plaintiff's land admeasuring 00H.28R which is bounded by:

- To the East – Government Road,
- To the West – Land of Panditrao Ghoghre,
- To the South - land of defendant No.2 to 4
- To the North - Government Odha.

3. He further submitted that the land of the defendants are adjacent to the land of the plaintiff. It is the case of the plaintiff that defendant No.1 encroached 1 H land of plaintiff from the north side to the extent of 0H.70R and defendants No.

2to 4 encroached 0H.28 R land of the plaintiff from south side to the extent of 0H.23R . Therefore, he prayed that the suit properties 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.

4. On the other hand, the learned advocate for the defendants submitted that the entire Gat No. 388 initially owned and possessed by the plaintiff's father. Defendant No.1 purchased 00H.62R land from one Kailash Babasaheb Salwe by executing registered sale deed bearing no. 1869/2000. Said Kailash Salwe purchased said land from the father of the plaintiff. Likewise, defendant No.2 purchased 00H.81R land from the father of plaintiff by the Sale deed bearing No.120/1982. He further submitted that the defendants had purchased their land after excluding Ambad -Pathari Road which is going from the Gat No.388. He submitted that the directions may kindly be given to the Court commissioner to measure all the adjacent lands of the suit property and land acquired by the Government in Gat No.388 for Ambad -Pathari road.

5. Heard both the sides. Perused the records. After perusing the record, it is seen that the plaintiff has come out with the case that he is the owner of 01H. 28 R area of land in Gat No. 388 situated at Mouza Machindranath Chincholi, Tq, Ghansawangi. The plaintiff has filed 7/12 extract of Gat No.388. Likewise, defendants No.2 and 3 have also filed sale deed bearing No.120/1082 and 1869/2000 on record in support of their case.

6. I have also perused 7/12 extract of Gat No.388. After perusal of this document, it is clearly seen that 01 H. 28 R land recorded in the name of the plaintiff. Likewise, name of the

defendants also recorded in 7/12 extract of Gat No.388. Further, this is the suit for possession of encroached land. There is no question of collecting evidence.

7. 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. Were 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”*.

8. Likewise, in the case of **Ramzan Sheikh Chand Sheikh (D) Thr. Lrs. And Oth. Vs. Panjab S/o Nathuji Gawande, reported in 2016 (4) All MR 765**, Hon'ble Bombay High Court held *“it is always desirable to have disputed suit property measured by competent surveyor to find out encroachment. Oral evidence can not prove such contentious issue conclusively.”*

9. After relying the aforesaid judgments of the Hon'ble High Court and all the documents filed by the plaintiffs, in my view, it is essential to make measurement of the suit property 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, 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 i.e Gut No.388, Mauza Machindranath Chincholi, Tq. Ghansawangi, ad measuring 02H, 75 R to the extent of 01H 28 R land 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 detail report along with map describing extent of encroachment, if any, in the suit land on or before 06.05.2023.
5. Plaintiff shall bear the expenses for court commissioner, writ be issued accordingly.

Dated 15/03/2023

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