

ORDER BELOW EXHIBIT 53 IN R.C.S. NO. 53/2011**Ganesh Kulkarni**

V/S

Saraswatibai Rathod & others[Order dated 16th September 2015]

1. This is application by plaintiff for re-measurement of the suit property by superior authority i.e. Superintendent of Land Record, Jalna through ETS machine.
2. The plaintiff/applicant has filed suit for recovery of encroached area of 1 H from defendants as well as for perpetual injunction and mandatory injunction.
3. Considering the nature of the suit, on application of plaintiff vide Exh. 34, TILR, Mantha was appointed as commissioner and was directed to carry out measurement and TILR Mantha measured the suit property and filed report at Exh. 50 along with map. However the map does not show specific encroachment and direction of the encroachment. Therefore the applicant prays for measurement of suit property by Superintendent of Land Record, Jalna by ETS machine.
4. Defendants have resisted this application vide their say Exh. 57 and contend that indeed as per earlier measurement defendant No. 1 has been shown in excess area in possession and in the measurement there is no specific mention of encroacher as well as direction of encroachment.

Moreover there is also wrong mention of four corners in the measurement map.

5. I have perused the record and proceeding and earlier report which is at Exh. 50. I have also heard learned counsel of the parties.

6. The nature of the suit requires the local investigation, therefore as per order XXVI, Rule 9 of the C.P.C. measurement was ordered, however indeed, the perusal of map as well as report does not show specific area of the encroachment as well as direction of the encroachment. Moreover there is also no mention of name of the encroacher and extent of the area of encroachment.

7. Therefore, in order to adjudicate this suit conclusively, the re-measurement by Superintendent of Land Record, Jalna that too by advanced measurer, ETS machine is must. Hence this application is required to be allowed. Hence I proceed to pass following order.

ORDER

- (i) Application at Exhibit 53 is hereby allowed.
- (ii) Superintendent of Land Record, Jalna is hereby appointed as court commissioner and directed to measure the suit property Gat No.1 by ETS machine and indicate specifically, the encroached area if any, as well as direction of encroachment and the name of the encroacher.
- (iii) The court commissioner is also directed to submit report along with measurement on or before 03/11/2015.

- (iv) The court commissioner to follow all rules of measurement manual before actual measurement by issuing prior notices to the plaintiff and defendants.
- (v) Plaintiff and defendants to bear proportionate cost of measurement as per their area in 7x12 extract and deposit that cost in the office of Superintendent of Land Record, Jalna accordingly.
- (vi) Issue letter to Superintendent of Land Record, Jalna accordingly.

Date: 16-09-2015

Sd/-
[P. S. Jondhale]
Civil Judge Jr. Division
Mantha