

Order below Exh. 41 in R.C.S. No. 533/2012

1) Plaintiff moved this application and prayed to direct the District Inspector Land Record, Kolhapur to re-measure the suit property as mentioned in order passed below Exh. 24.

2) It is contention of the plaintiff that Taluka Inspector Land Record had been specifically directed to measure the suit property block No. 591 and land of defendant block No. 592. He had been also directed to collect the information that whether defendant affixed his pipe line to fetch the water from east side river of the suit property. Plaintiff had brought into notice that at the time of measurement there was a sugarcane crop in the suit property and, therefore, it was not possible for the surveyor to measure the suit property. But even though he measured the suit property without determining the fixed point. According to him the measurement is not according to rule and order passed below Exh. 24.

3) Defendant strongly opposed the application and submitted that this is the third time of the plaintiff to get measure the suit property. Learned counsel for defendant Mr. Khanjire submitted that plaintiff moved this application only with intent to prolong the hearing. According to him, Surveyor properly and correctly measured the suit property. He prayed to reject the application.

4) It is settled position of Law that when there is a boundary dispute or dispute of the encroachment or there was a situation that Court itself cannot be verified the factual position, in that circumstance Court is duty bound to verify the situation from the expert. Plaintiff clearly discloses that plaintiff has a serious dispute that defendant affixed his pipe line from the suit property to fetch the water from the east side river of the suit property.

5) Now, I turn to the order passed below Exh. 24. In the said order it had been specifically directed to the Cadastral Surveyor to measure suit property and Block No. 592. He had been also directed to verify all the details. Application clearly raised the dispute about the pipe line which alleged to be affixed in the suit property. It is matter of record that defendant specifically denied this fact. The sequence of events discloses that both parties have a dispute regarding alleged pipe line.

6) Now, I turn to the measurement map. Measurement map discloses that Cadastral Surveyor measured suit property and Block No. 592. Measurement map nowhere discloses a single word about the alleged pipe line and its description. Measurement map also does not disclose the correct area of Block No. 591 and 592. Said map also does not disclose some other aspects which had been mentioned in the order below Exh. 24. This situation clarifies that Cadastral Surveyor not measured the suit property according to the procedure established by Law and according to directions as per order Exh. 24.

7) Apart from factual aspect it is necessary to consider the legal aspect. It is settled position of Law that when the measurements are not according to Law, in such circumstances Court shall direct to measure the suit property so as to make the final adjudication. Hence, I proceed to pass the following order.

ORDER

- 1) Application is allowed.
- 2) T.I.L.R. Hatkanangale is hereby directed to measure the suit property.
- 3) He is directed to measure Block No. 591 and 592. He is specifically direct to verify the situation of the pipe line and the fact that factually defendant affixed his pipe line in the suit property or not.
- 4) He is also directed to verify the detail situation which is necessary for final adjudication.
- 5) He is further directed to submit his report on or before 17/12/2018 without fail.
- 6) Plaintiff is directed to pay necessary charges directly in the office of T.I.L.R. Hatkanangale.
- 7) Concern clerk shall issue letter to T.I.L.R. in Marathi language with all details as mentioned in the order.

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Date 21/11/2018
Ichalkaranji

(P. S. Bhandari)
5th Jt. Civil Judge Junior Division
Ichalkaranji