

MHKO070006772015



Shri Ananda Rau Bhosale - Plaintiff

Versus

Shri Babu Bhau Bhosale and Ors. - Defendants

COMMON ORDER BELOW EXH.NO.65, 66 AND 67 IN

R.C.S.NO.118/2015

The plaintiff has filed application (Exh.65) for permission to lead evidence, application (Exh.66) for condonation of delay for filing an application to review order below Exh.60 and application (Exh.67) for review of order below Exh.60. Defendants have filed their say and opposed the application. Perused the application and say. Heard the learned Advocate Shri R.A.Magdum for the plaintiff and and Shri K.C.Shirguppe for defendants No.1 to 5.

2] The plaintiff contended that he had given an application for taking evidence of the Court Commissioner at Exh.60. However, said application was rejected by the Court. Thereafter in good faith the plaintiff filed evidence close pursis. However, in order to prove commissioner report and measurement map, it is necessary to examine the cadastral surveyor who has carried out the measurement. Accordingly, the plaintiff has also filed an application for condonation of delay (Exh.66) for filing an application for review of an order below

Exh.60 and has filed an application (Exh.67) for review of an order below Exh.60.

3] Defendants contended that the plaintiff has already filed evidence close pursis. Delay has not been explained for claiming review of an order below Exh.60. There is negligence on the part of the plaintiff. At the same time review application is not tenable. There is no error apparent on the face of record. Accordingly, defendants prayed for rejection of the application.

4] I have perused the plaint, written statement (Exh.13), Issues (Exh.38). It shows that the plaintiff has filed present suit for removal of an alleged encroachment in suit property and for perpetual injunction. The record of the suit shows that DILR commission was appointed in the present suit for carrying out measurement of CS No.283 as per order below Exh.20. Accordingly, work of commission was carried out and the concerned cadastral surveyor who has carried out the actual measurement has filed his report and measurement map. In the present suit the plaintiff has averred that defendants have carried out construction by committing an encroachment in suit property. The plaintiff has prayed for removal of an encroachment in the suit property. Perusal of issues at Exh.38 also shows that issue has been framed to the effect that 'Does plaintiff prove that defendants have raised construction over suit property by making encroachment over it?' Thus, in order to decide the suit on merit and in order to determine that whether defendants have committed any encroachment in the suit property as alleged by the plaintiff, it is necessary to examine the cadastral surveyor

who has carried out measurement of CS No.283. Thus, having regard to the nature of the suit, it becomes inevitable to allow the plaintiff examine the concerned cadastral surveyor for final and effectual determination of issues which are involved in the present suit. Therefore, it would be justifiable to allow present applications for finally deciding the suit on merit. However, at the same time delay caused by the plaintiff needs to be compensated. Accordingly, I pass the following order:-

O R D E R

1. Applications at Exh.65, 66 and 67 are allowed subject to cost of Rs.500/- to be given to defendants.
2. Original copy of this order be kept below Exh.65 and copies thereof be kept below Exh.66 and 67.

Place – Jaysingpur.
Date - 15/02/2025

(**Smt. Renuka D. Gaikwad**)
Joint Civil Judge Junior Division,
Jaysingpur, Tal. Shirol, Dist. Kolhapur.