



Sadu Lulle etc. Vs. Yashwant Tikode etc.

CNR - MHKO130005192015

ORDER BELOW EXH.27 IN R.C.S.No. 112/2015

1. This application is filed by plaintiff under Order 26 Rule 9 of Code of Civil Procedure for appointment of Court Commissioner.

2. According to plaintiff, the suit is for removal of encroachment. It is pleaded that, defendants have encroached upon suit property to the extent of 5 R. land. He has earlier measured the suit land vide application no. 3279 dated 27/04/2015. Further, in that measurement map there is difference in permanent boundaries mark and actual possession, as well, there is no specific reference as to encroachment. Hence, measurement of suit land again became necessary with specific measurement as per cultivation with permanent boundaries. It is argued that, by allowing such application, no loss will be caused to the defendants. Rather, if application is rejected, the plaintiff may suffer irreparable loss. Hence, prayed to allow this application.

3. Learned advocate of plaintiff relied on following case laws at Exh. 34.

1.	Bhupendra Bhagwat Turkar Vs. Homraj Zituji Meshram, 2014(4) Mh.L.J. 231.
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4. This application is opposed by defendant no. 1 by filing their say below Exh. 32. According to learned advocate of defendants, prior to institution of suit already measurement is carried out by DILR, Kagal on application made by plaintiff and

this fact is specifically referred in the application itself. Further, map is attached with the suit. Therefore, there is no need to again measured the suit land. Further, according to plaintiff if there are shortcoming in the earlier measurement then the plaintiff should have filed complaint in that respect. Now, after completion of earlier measurement almost after 6 years have been lapsed and during progress of trial this application is filed. According to defendants, the measurement can not be taken again and again as per convenience of plaintiff. Further, as earlier measurement is carried out again for the same reasons the application can not be allowed. Hence, urged to reject the application.

5. Perused the record. Heard the learned advocate for both the parties.

6. If the contents of plaint are considered along with measurement map carried earlier, there appears several adjacent land holder to the suit property Gat no. 1097. Considering, the pleading in plaint para no. 3 Gat no. 1091, 1095, 1096, 1098, 1101, 1102, 1113 are adjacent land owners of Gat no. 1097. Considering this fact and earlier measurement, it is just and proper to allow the application by directing to DILR to measured the adjacent Gat Number of suit property along with suit property. Further, suit is relating to encroachment and removal of possession. Earlier measurement does not indicate specific facts of encroachment made by any party. Thus, to clarify this position of encroachment if any, the application is required to be allowed. The learned advocate of plaintiff has relied on case law **Bhupendra Bhagwat Turkar Vs. Homraj Zituji Meshram, 2014(4) Mh.L.J. 231** cited supra, wherein it is held that, it is

always desirable to get suit land or field measured by an expert or competent public official to find out the area of the suit land encroached upon. Thus, considering ratio and facts of this case, the application is required to be allowed. In the result, following order is passed.

<u>ORDER</u>	
1.	Application Exh. 27 is allowed.
2.	TILR/DILR Kagal is directed to carried the measurement of suit Gat No. 1097 with Gat no.1091, 1095, 1096, 1098, 1101, 1102, 1113 and 1114 situated at Haladi, Tal. Kagal and shall specify encroachment portion if any in the suit land.
3.	The Court Commissioner shall prepare the map showing there in boundaries of the disputed suit land and land claimed by the defendants along with measurement in the map.
4.	Plaintiff shall deposit the fee of Court Commissioner in the concern office and Court Commissioner shall prepare report and file it on record of the case within 2 months from the receipt of this order.
5.	Issue writ accordingly.

Kagal
Date:- 13/04/2023

(B.D.Gore)
Civil Judge Junior Division,
Kagal.