


MHKO160004682017 	Reg. Civil Suit No.88/2017 (Balu Vs. Laxman etc.)
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ORDER BELOW EXH. 27

1. This an application has been filed by plaintiffs under Order XXVI Rule 9 of the Civil Procedure Code for appointment of court commissioner.
2. It is contention of plaintiffs that, present suit is filed for perpetual injunction and declaration against defendants. Suit property is ancestral property of plaintiffs. In 7/12 extract of Survey No.57/4 name of predecessor of plaintiffs is entered in possession and cultivation column. Defendants or their predecessor have no concern with survey No. 57/4 or suit property.
3. Further it is contended by the plaintiffs that predecessor of plaintiffs have purchased said property from Vithal Jagannath Ketkar, Madhukar and Vasant Jagannath Ketkar by registered sale deed No. 1335/1953 on 28/12/1953 for consideration amount of Rs. 700/-. Since then they are enjoying possession of suit property.
4. In Consolidation proceeding of village Lolane survey No. 57 is divided in to old 1 to 9 part and thereafter it was divided into new number as 1 to 15 part. After that, survey No. 57/10 admeasuring area 2 Hector 37 R was divided into sub survey No. 1 to 15 by gunakarpatrak. Which was mutated on the name of predecessor of

plaintiffs. But, on 7/12 extract of Gat No. 195 is mentioned old survey No. 57/4 sub survey No. 57/10 it is mutated oversightly and illegally on the name of predecessor of defendant No.1 and predecessor of defendant no.5 and 6. Old survey number of Gat No. 195 is 57/4 was renumbered as 57/10. Further it is contended by the plaintiffs that predecessor of defendants have taken benefits of illiteration of predecessor of plaintiffs they have entries of their name in 7/12 extract of suit property. By taking disadvantage of their name in 7/12 extract they are trying to grab the suit property. Therefore, in order to determine the fact that whether any encroachment made at the hands of defendants or not and same is rightly done by court-commissioner. Therefore, it is necessary to appoint the court-commissioner for the purpose of ascertaining the exact position.

5. Defendants have filed their say at Exh. 29 and denied all the contents of the application. They contended that plaintiffs have filed this application after filing of written statement and counter-claim by them. Now, appeal is pending in Hon'ble High Court, Bombay. Hence prima-facie this application is not tenable.

6. Further it is contended by defendants that suit property Survey No. 54/4 never formed as Gat No.195. Actually Survey No.54/10 wa formed as Gat No. 195. Gat No. 195 never purchased by predecessor of plaintiffs. Gat No. 195 is ancestral property of defendants. Hence, there is no necessity of appointing Court Commissioner. Therefore, they prayed to reject this application.

7. Heard both side and perused record.

8. It is contention of plaintiffs that in consolidation proceeding Survey No. 54/4 was formed as Gat No.195. On the contrary contention of defendants that Survey No. 54/10 was formed as Gat No. 195. After perusal of record it reveals that in consolidation proceeding Survey No. 54/4 was formed as Gat No.188 and Survey No.54/10 was formed as Gat No. 195.

9. After perusal of document it appears that, defendants are owner of Gat No. 195. Here main controversy between plaintiffs and defendants is that, whether Survey No. 54/4 was formed as Gat No. 195 or not and defendants have made encroachment over suit property or not ?

10. In view of above discussion, it is necessary to see whether there is an encroachment, it is always desirable to get measurement of encroached land. So, it is necessary to appoint an expert commissioner to investigate and ascertain the boundaries in respect of field of plaintiffs and defendants as per record.

11. Court commissioner will be appointed for the purpose to obtain the evidence for elucidation matter not to collect evidence which can be taken in the court. In said matter question regarding the area of land encroached by defendants. Therefore, this question can be best adjudicated by taking assistance of expert such as T.I.L.R.

12. In my view in each and every case it cannot be said that commissioner appointed by the court invoking its power under section 75 r/w Order 26 Rule 9 of the Code of Civil Procedure is for collection of evidence, but it would be helpful to elucidating matter in dispute.

13. In said matter T.I.L.R. is expert person who measure land and fixed the boundaries so appointment of T.I.L.R. as court commissioner for measurement of Survey No. 54/4 i.e. Gat No. 188 and Survey No. 54/10 i.e. Gat No. 195 which is situated at Lolane, Tal.-Shahuwadi, Dist.-Kolhapur hence,I proceed to pass following order.

O r d e r

1. Application is allowed.
2. Taluka Inspector of Land Record, Shahuwadi-Malkapur (i.e. T.I.L.R) is appointed as court commissioner.
3. The Court Commissioner T.I.L.R is directed to measure and fix boundaries of Survey No. 54/4 i.e. Gat No. 188 and Survey No. 54/10 i.e. Gat No. 195 which is situated at Lolane, Tal.-Shahuwadi, Dist.- Kolhapur as per record and to submit the report along-with map within one month from the receipt of commission writ.
4. The plaintiffs shall deposit court commissioner fees as per rule and submit necessary documents and after compliance, commissioner writ be issued accordingly.

(Smt.R.A.A.Khatib)
Civil Judge Jr.Dn.,
Malkapur-Shahuwadi.

Date:12.03.2020

CERTIFICATE

I affirm that the contents of this [P.D.F.](#) File judgment are same, word to word, as per the original judgment.

Name of the Stenographer	Sou. A. S. Kagale
Name of Court	Smt.R.A.A.Khatib, C.J.J.D & J.M.F.C. Malkapur-Shahuwadi.
Date of Dictation	12/03/2020
Judgment signed by the P.O. on	12/03/2020
Judgment uploaded on	16/03/2020