



Kapil Dabhade + Ors.

Vs.

Tanaji Dabhade + Ors.

**ORDER BELOW EXHIBIT 19**

This is the suit for declaration, perpetual injunction and for removal of encroachment. Vide this application by virtue of order XXVI Rule 9 of C.P.C the plaintiff has prayed to issue commission to ascertain and fix the boundaries of suit property described in para 1 of the Plaint.

2) Perused the application and say filed by the defendant. Heard both the learned advocates at length. Upon perusal of the record the plaintiff seeks the commission to bring the exact boundaries by measuring the Gat nos.2187 and 2188 jointly which will be helpful for just decision of the Suit. On the other hand the defendant argued that application be rejected as the boundaries are already brought on record vide their previous map.

3) Having heard both the rival submissions and on perusal of plaint and the documents filed on record I am to state that, the suit is at initial stage, yet the issues have not been framed. The trial is yet to be commenced. The most crucial fact which is worthy to be mentioned that, there is a pleading of plaintiff as to the encroachment by the defendant. The commission should not be observed as it is for collection of evidence to support its case. In the case in hand an appropriate scenario of the suit property needs to come before this court in order to decide the matter on merit. So also it is observed that the actual position of the suit property and whether encroachment is done or trying to be done can be brought on record only by the way of commission which will determine the boundaries of the above Gat nos. From the provision it can be gathered that

appointment of court commissioner can be for carrying out local investigation for the purpose of gaining clarity upon any matter. It is observed that oral evidence cannot prove contentious issues conclusively, a map pertaining the disputed property will become a vital document for finally deciding the real controversy. It will also be helpful to decide matter in issue without giving rise to the multiplicity of proceedings. Having observed so, I proceed to pass the following order -

**ORDER**

- 1 Application vide Exhibit no. 19 is allowed.
  
- 2 Taluka Inspector Land Record, Panhala is appointed as a Court Commissioner for the purpose of carrying out local investigation under order 26 rule 9 of the Code of Civil Procedure i.e. to carry out the work of measurement upon the suit property (Gat nos.2187 and 2188) for the purpose of identifying the boundaries and measurements.
  
- 3 Court commissioner is further directed to give due notice to the parties while conducting the work of measurement and shall demarcate the boundaries of the property by noting down the actual measurements in the measurement map, showing the precise and concise area under encroachment, if any.
  
- 4 The Court Commissioner is directed to submit his report along with the map, within 30 days from the date of this order.
  
- 5 The plaintiff is directed to deposit Rs. 2000/- (Rs. Two Thousand only) in the office of T.I.L.R. towards Commissioner fee and supply all the necessary documents to the Court Commissioner for their smooth functioning.
  
- 6 Writ be issued to the Court Commissioner accordingly.

Date : 24/08/2023

( K. J.Khomane )

Civil Judge Junior Division, Panhala