

MHLA090028042020



Order Below Exhibit 14 in R.C.S./486/2020

**Sudhakar S/o. Vishwanath Tirkule Vs. Madhukar S/o. Vishwanath Tirkule and
other 7**

The plaintiff has filed present application U/O 26 Rule 9 of C.P.C.

2. The plaintiff has contended that, he has filed present suit for declaration and perpetual injunction against the defendants and same is pending for hearing without statement before this Hon'ble Court. The plaintiff, defendant nos. 1 to 8 and one deceased Manmath Govind Tirkule are the owners and possessors of the land Gat No.269 total Adm. 8 H. 45 R. Revenue Assessment of Rs.22.97 Ps. situated at village Satala, Tal.Udgir as per their respective area. The land survey no.114/1 Adm. 8 H. 45 R. was converted in to block no.269 in the consolidation scheme and there is no change in the acreage of the land.

3. He has further contended that, the plaintiff is owner in different two parts in the said land Gat No.269 and now he has purchased adjacent portion Adm. 0.20 R. of Gat No.269 from defendant nos.6 to 8 under registered sale deed dated 21/10/2020 bearing day book no.3983/2020. Thus, the plaintiff now the owner and possessor of total land Adm. 1 H. 37 R. [3 acres 18 gunthas] out of Gat no.269 and its boundaries as under-

Towards East : Land belonging to deft.no.2 out of Gat no.269.
Towards West : Land of Manmath Anandabai and deft.no.1.
Towards South : Land of deft.no.1 out of Gat no.269.
Towards North : Land of deft.no.1 out of Gat no.269.

4. He has further contended that, there is dispute in respect of encroachment of the land. It is contentions of the plaintiff, that the defendant nos.1 and 2 by East, South and North side are causing a trouble to peaceful cultivation of suit land, the defendant nos.1 and 2 who are adjacent owner to the suit land are trying to encroached the portion of the suit land.

5. The plaintiff specifically pleaded in para no.7 of the plaint that, he is going to measure the suit land through the Dy. S.L.R. by filing separate application for Court Commissioner. Therefore, in the interest of justice and to ascertain exact location, encroachment if any and for demarcation of the area as per record the joint measurement is necessary.

6. The defendant nos.1 to 8 are appeared in the present suit but they failed to filed their Written Statement. But, the defendant nos.1 and 2 have committed breach of injunction order against them. So, the plaintiff also filed application U/o. 39 Rule 2 [a] of C.P.C. against the defendant nos.1 and 2 and same is pending before this Hon'ble Court bearing M.A. No.588/2021.

7. In the circumstances it is made clear that when there is dispute about the encroachment, then it is necessary to appoint the

Court Commissioner for joint measurement, unless joint measurement of land of plaintiffs and defendants is carried out, encroachment cannot be determined. Therefore, joint measurement is necessary.

8. In view of the facts and circumstances of the case, it is just and proper to appoint the Dy. Superintendent, Land Record, Udgir and he should be directed to measure the land and give the full sketch map of the lands of the parties by measuring the same jointly and give findings on the following points.

A] That, Dy.S.L.R. to be directed to measure the land Gat no.269 old Survey No.114/1 of village Satala, Tal.Udgir, jointly and Dy.S.L.R. to give findings, in respect of as to how much land out of the suit property is in possession of plaintiff and from which side.

B] That, Dy.S.L.R. to be directed to measure the land of defendants and Dy.S.L.R. to give findings in respect of as to how much land out of Gat no.269 is in possession of defendants from which side. That, any other just and proper direction may be given to the concerned Dy.S.L.R. by the court which the Hon'ble Court may deem fit in the interest of justice.

9. In view of the facts and circumstances of the case, the joint measurement of the lands of parties is must and should be necessary to adjudicate the matter finally and to render justice to the parties. Plaintiff has relied upon following citations -

1. *Kolhapuri Bandu Lakade Vs. Yallappa Chinappa Lakade, Decd., Thru' Pooja @ Poojari Y. Lakade & ors., 2011(3) Bom.C.R.807.*
2. *Malhar Ganpat Bokephod & ors. Vs. Shivaji Vishwanath Pawal, 2014(1) Bom.C.R.806.*
3. *Mayuresh Subhash Sonawane Vs. Yashwant Babu Bhoir & Anr., 2022(2) ALL MR 348.*

10. On the other hand, defendants have filed their say over back-leaf of the present application. They have strongly objected the present application and contended that, there was no any partition took place in between the plaintiff and defendant no.1. The plaintiff and defendant no.1 are the real brothers. As there is no any partition took place at any time as alleged by the plaintiff so the plaintiff alone is not entitled for ownership and carry out the alleged measurement of the joint family land of plaintiff and defendant no.1. The plaintiff by taking disadvantage of entry of his name in the revenue record intending to grab the share of the defendant no.1. Hence, this application may kindly be rejected with cost.

7. Heard. Perused application and say filed by defendant. Also, perused plaint it is appeared that, plaintiff is owner and possessor of the middle portion of block no.269 to the extent of 1H. 17R plus purchased land ad-measuring 20R. Now the plaintiff is the owner and possessor of total 1H. 27R. land out of block no.269 situated within the local limits of village Satala. Further defendant nos.1 and 2 are adjacent owners in block no.269.

However, the land of defendant no.2 out of block no.269 is situated on an East side of plaintiff. Land of defendant no.1 out of block no.269 is situated towards the West, North and South side. Thus, the defendant nos.1 and 2 covering all four sides of the plaintiff. They were causing trouble in peaceful cultivation of the suit. Considering this to decide the present suit on merit and elucidating the matter disputed between the parties application is required to be allowed. Hence, the order.

ORDER

1. Application below Exh.14 is hereby allowed.
2. Dy. S.L.R., Udgir is appointed as a Court Commissioner.
3. The Court Commissioner is directed to measure the suit land and adjacent land as mentioned in the application.
4. The plaintiff shall deposit necessary Bhatta as a Court Commissioner fee.
5. On depositing above amount, writ of commission be issued with the necessary papers.
6. The commissioner shall submit his report and map within one month from issuance of writ of commission.

Udgir.
Date-08.07.2022

(Smt. J. C. Gupta)
Jt. Civil Judge (J. D.), Udgir.

CERTIFICATE

I affirm that, the contents of this P.D.F. file are same, word to word, as per the original order.

Name of the Stenographer : Kendre L.S.

Court : Jt.Civil Judge Jr.Dn. and Judicial
Magistrate F.C., Udgir.

Date : 08.07.2022.

Order signed by the Presiding : 08.07.2022.
officer on

Order uploaded on : 08.07.2022.