

MHLA110001552021



**ORDER BELOW EXHIBIT NO.70 IN
REGULAR CIVIL SUIT NO.145/2021
RAMESH VS. CHANDRAKANT & ORS.**

1. This is an application seeking appointment of Court Commissioner as per Order XXVI Rule 9 of the Civil Procedure Code, 1908.
2. As per the contention of plaintiff No.3, plaintiffs and defendants were the members of joint family. In the partition of the joint family property, 4.62 R land out of Survey No.147/A and 2H 78R land out of Survey No.138/B is allotted to share of plaintiff No.1. 1H 90R land out of Survey No.147/A is allotted to the share of plaintiff No.2 and 3 each. However, defendant No.1 to 10 are trying to destroy the bandh situated in between land of plaintiff and defendant No.1. Therefore, in order to ascertain the exact boundaries of land Survey No.147/A and 138/B, they sought to appoint Dy.S.L.R. to measure the abovesaid lands.
3. Plaintiffs resisted the application and contended that, the application of plaintiff is not maintainable. Plaintiffs have not produced the title deed of disputed land. By way of filing this application, plaintiffs are trying to collect the evidence. Hence, it is prayed to reject the application.
4. Heard the Learned Counsels for both sides.
5. It is not in dispute that the suit is for declaration and fixation of boundaries of the suit property. Plaintiffs and defendant

No.1 are brothers having their lands with each other and land of defendant No.6 to 10 is situated adjacent to the northern side of land of plaintiff. There is dispute regarding the boundaries of plaintiffs and defendants. Therefore, in order to determine and fix the boundaries of disputed properties, measurement through Cadastral Surveyor is necessary. It has been held by the Hon'ble High Court in the case of **Ramchandra vs. Dudharam, reported in 2004(1) Mh.L.J 278** that "*under Order 26 Rule 9 of the Code of the Civil Procedure, the Court has discretion to order local investigation or not. The object of the local investigation is not so much to collect evidence which can be taken in Court but to obtain evidence which from its peculiar nature can only be had on the spot. The cases of boundary dispute and disputes about the identity of lands are instances, when a Court should order a local investigation under Order 26 Rule 9 of the Code of Civil Procedure. In order to determine whether there has been an encroachment, it is always desirable to get the fields measured by an expert and find out the area encroached upon. Oral evidence cannot conclusively prove such an issue.*" The ultimate object of the C.P.C. is to facilitate the justice by affording reasonable opportunities to the parties to prove their case. If measurement is done through the cadastral surveyor, the real picture and appropriate report will come on record. So there would be no reason for causing any prejudice to the defence. Therefore, in view of this discussion, in order to ascertain the exact boundaries and the location of land of plaintiffs and defendants, it is necessary to measure the aforesaid lands through Dy.S.L.R. Hence, the application is liable to be allowed and accordingly, I pass the

following order;

ORDER

1. The Dy. Superintendent of Land Record, Nilanga, Dist. Latur is hereby directed to measure and ascertain the boundaries of Survey No.147/A and 138/B situated at Nilanga, Tal. Nilanga and to submit the report within two months from the date of depositing of relevant charges by plaintiffs.
2. Plaintiffs are directed to deposit requisite charges within one month from the date of order and shall submit the photo-copy of challan in the Court.
3. After payment of requisite charges by plaintiffs, necessary writ be issued to Dy. Superintendent of Land Record, Nilanga, Dist. Latur.

Nilanga
Date: 21/10/2024

(Smt. V. D. Bhosale)
Jt. Civil Judge Sr. Dn., Nilanga.