

MHLA110016132022



ORDER BELOW EXHIBIT NO.39 IN
REGULAR CIVIL SUIT NO.1090/2022
BABURAO VS. WAMAN & 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 defendant No.1 to 4, plaintiffs have filed this suit for relief of perpetual injunction and plaintiffs are claiming that Survey No.144 is situated at bank of Manjara river and they have been lifting water from it with the help of electric motor. In fact, the said Survey number is Gairan land, situated away from Manjara river and adjacent to Survey No.86. Therefore, it is necessary to ascertain the exact boundary of Survey No.144 and 86. Therefore, in order to ascertain the exact boundaries of land Survey No.86 and 144, they sought to appoint Dy.S.L.R. to measure Survey No.144 and 86.
3. Plaintiffs resisted the application and contended that, Survey No.86 is not part and parcel of the suit land therefore he raised objection to measure Survey No.86 and given his no objection for measuring Survey No.144. Therefore, plaintiff sought to reject the prayer of measure of Survey No.86 and allow the prayer of measurement of Survey No.144.
4. Heard the Learned Counsel for both side and perused the record. It is not in dispute that the suit property is situated in

Survey No.144. As per averments in the plaint, cause of action arose when plaintiffs requested defendants not to obstruct them in lifting the water from Manjara river unless and until the boundaries of Gairan land and the land of defendant are measured, however, as defendants denied for the measurement, they file the suit. From the averments itself clear that there is boundary dispute regarding the land of plaintiffs and defendants. 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.144 and 86 situated at Hosur, 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: 09/09/2024

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