

MHLA120020602024

REGULAR CIVIL SUIT NO.426/2024
ORDER PASSED BELOW EXHIBIT NO.12

1. This is the application filed by the plaintiff under Rule 9 Order XXVI of Code of Civil Procedure for appointment of court commissioner.
2. By this application, plaintiff contended that, the present suit is for demarcation of boundaries and perpetual injunction. The plaintiff filed this application for measurement of the suit property as well as the properties of defendant no.1 & 2 by Superintendent of Land Revenue.
3. Defendant file his say behind the same application. He submitted that the property of defendant be admeasured along with the property of plaintiff.
4. Heard the Ld. Advocate for plaintiff and Defendant.
5. The present suit is demarcation of boundaries and perpetual injunction to restrain the defendant from causing obstruction to the suit property. Considering the nature of suit, the burden is on the plaintiff to prove the exact boundaries of suit property. The plaintiff is owner of Survey NO.146 admeasuring 59R. Defendant is adjacent owner of the suit property and defendant no.1 has 57R property and defendant no.2 has 1H. 17R property in the same survey number. It is well settled that, without effecting measurement the demarcation of boundaries cannot be decided. Crux of the matter is law governing fact finding on the point of proof of fact

and demarcation of boundaries. This is the subject matter of this suit. The demarcation of boundaries could not be a matter of oral evidence. The fixation of boundaries is not a matter to be adjudicated upon oral evidence of any number of witnesses, who have witnessed the act of obstruction. The demarcation of boundaries sought to be proved by aid of court commissioner. Accordingly, this court is the fact finding as to fact and demarcation of boundaries can be done only when inspection and measurements are carried out by appointment of an expert commissioner.

6. The say to this application discloses that defendant has no any objection for measurement of the suit property. He has only contention that without joint measurements of plaintiffs and defendants property, the demarcation of boundaries cannot be done. The defendant is adjacent owner of suit property. Considering the pleading and submission of both parties, the measurement of whole survey number of suit property by expert such as cadastral surveyors is necessary to determine the fixation of boundaries. It will not be possible without measurement of defendants property. Thus, it will be proper to admeasure both the properties of plaintiff and defendant.

7. Hence, in my considered view, in view of the Rule 9 of Order XXVI of Code of Civil Procedure, the application deserves to be allowed with appropriate directions to cadesteral surveyors. Hence, the order-

ORDER

1. The application (Exh.12) is allowed.
2. The Deputy Superintendent of Land Records, Shirur Anantpal is hereby appointed as a Court Commissioner.
3. Court Commissioner shall carry out measurements of whole Survey no. 146 situated at village Rani Akulnga,

Tal. Shirur Anantpal, Dist. Latur including plaintiff's and defendant's property.

4. The Commissioner shall file his report on or before 28/01/2025.

5. Plaintiff and defendant to bear expenses of said measurement and shall deposit the same either in the court or in the surveyor office within one week from today after necessary compliance of documents.

Date:- 03/12/2024
Nilanga

(Smt.A.S.Gunjawate)
2nd Jt. Civil Judge Junior Division,
Nilanga.