

R.C.S. No.240 of 2022
CNR NO.MHLA130006782022
Gangaram+3 Vs. Saudagar+5

Order Below Exh.35
(Dt.17-03-2023)

1. This is an application filed by the plaintiffs under Order 26 Rule 09 of the Civil Procedure Code. Defendant Nos.1,3 to 6 filed their say at Exh.37 and objected the application.
2. Perused application and say. Heard, Shri. N. P. Gaikwad, learned advocate for the plaintiffs / applicants and Shri. V. A. Digule, learned advocate for the defendant Nos.1,3 to 6. Suit proceeding ex-parte against defendant No.2.
3. It is the contention of the applicants / plaintiffs that, they are the owners in possession of suit land. The defendants have caused encroachment over the suit land and they are cultivating it and taking usufructs of the said portion of land. Therefore, the plaintiffs have filed this suit for recovery of possession. It is further contended that the plaintiffs have got their land measured through the office of Deputy Superintendent of Land Records, Renaur, and in the said measurement it is revealed that the defendants have caused encroachment over the suit land. It is further contended that the defendants had agreed that they will deliver vacant possession of the encroached portion. However, defendants did not keep their promise. Hence, this suit is filed by the plaintiffs. Hence, he prayed to appoint court commissioner for conducting measurement of the suit property and fixing boundaries. Plaintiff further contended that unless the measurement is done, the fact about exact encroached portion could not be possibly brought on record. Hence, application be allowed. The plaintiff is ready to bear measurement charges.

4. Defendants filed their say at Exh.37 and objected the application. It is the main contention of the plaintiff that the defendants have filed an application for getting their land measured. The measurement is in progress. In case the application of the plaintiffs is allowed then it will result into to impediment to the progressing measurement of the defendants' lands. It is further contended that the application is filed with a view to collect evidence. The appointment of court commissioner is not tenable in the eye of law. Hence, application is liable to be rejected.

5. On the basis of rival contentions of the parties, the points which arise for consideration, and the findings against those points and the reasons for arriving at such findings are recorded as under:

Points for determination

- | | |
|---|-------------------------|
| (1) Whether, in the given facts and circumstances it is necessary to appoint court commissioner and call report from him? | ...Yes. |
| (2) What order? | ... As per final order. |

REASONS

Point Nos.1 and 2

6. This is a suit for recovery of possession of encroached portion of land, alleged to have been encroached by the defendants. The plaintiffs averred in their suit that they are the owners of the suit property. It is his contention that the defendants are adjacent land owners and they have illegally encroached upon the suit land, cultivating the said encroached portion and taking usufructs of the suit land. The defendants, admittedly, have denied the encroachment.

So, if there is any encroachment or not is a disputed question which is to be decided. This question is the cardinal aspect of the litigation. Bringing on record factual aspect is one thing and collection of evidence is another thing. Certain things could be found on the spot only. No other evidence could take the place of report of the court commissioner. In the case at hand, in case the report of the commissioner is called it will not only bring on record the true picture but also help the court to come to the proper conclusion. Hence, having regard to the nature of the suit, the relief claimed by the plaintiffs and the objection of the defendants, I am of the opinion that no prejudice will be caused to the defendants in case the application is allowed. Therefore, for the reasons discussed above, point No.1 is answered accordingly and for the same reasons in answer to point No.2 following order is passed.

ORDER

(1)	Application is allowed.
(2)	The Deputy Superintendent of Land Records, Renapur is appointed as a Court Commissioner, with directions to conduct joint measurement of plaintiffs' land i. e. Land Gat. No.371 and the lands of defendants, situated at village Wangdari, Tq. Renapur, Dist. Latur, fix four boundaries of plaintiff land prepare the Report and Map and submit the same within 30 days of deposit of requisite of fees by the plaintiffs.
(3)	The plaintiff is directed to pay the requisite fees in the concerned office immediately.
(4)	Plaintiff is further directed to place on record the original or photo copy of the receipt of payment of fees in the concerned office.
(5)	The defendants are directed to co-operate the

	measurement officer and provide him necessary documents, if so required.
(6)	Costs in cause.

Date.17.03.2023

Sd/-
(Ramakant B. Hanwate)
CJJ, Renapur