

MHND260008512023

**Order below Exh. 14 in RCS No. 76/2023**

This is an application filed by the plaintiff under Order XXVI Rule 9 of Code of Civil Procedure for appointment of Taluka Inspector of Land Records, Ardhapur as cadastral surveyor as court commision.

2. As per the plaintiff, he is owner and possesor of land in Gut No. 6 of village Khairgaon to the extent of 15 R. Since the father of plaintiff had house property at Sarafanagar, Nanded. He is residing with his parents at the given address. Father of plaintiff died on 03.02.2010. Since then he had no access to the suit property. The defendant had enchroached to the land of plaintiff to the extent of 7 R. The plaintiff had requested to measure the land but defendant refused to do so. Hence filed present suit praying for recovery of land, alongwith prayer for measure the land through cadastral surveyor. Hence prayed to allow the application.

3. Following points arose for determination to which my findings with reasons thereon are as under :

Sr. No.	Points for determination	Findings
1.	Whether appointment of Taluka Inspector of Land Record as cadastral surveyor is necessary to determine present case?	Yes.
2.	What order?	Application is allowed.

Reason as to point No. 1.

4. Read application, heard learned Advocate for the plaintiff.
5. Before dealing with the facts of present case one should go through the provisions of Order XXVI Rule 9 which reads as in any suit in which the court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market-value of any property, or the amount of any mesne profits or damages or annual net profits, the court may issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon to the court.
6. After perusal of record it shows that, On service of summons to defendant appeared through Advocate by filing Vakilpatra below Exh. 6 but failed to file written statement within the time estipulated under

order VIII rule 1 of Code of Civil Procedure. hence this court proceeded without written statement by passing order below Exh. 1 of dated 21.02.2024.

7. The plaintiff filed his evidence affidavit below exh. 12. Matter was posted for cross examination of plaintiff witnesses but till today Advocate for defendant failed to cross examined the witnesses. Hence this court passed order of no cross examination. Record further shows the plaintiff filed substantial evidence before this court. Since present suit is for recovery of land from the possession of defendant. It is necessary to measure the land through cadastral surveyor so that this court may come to the conclusion about encroachment of land at the hands of the defendant. Considering all these aspects of the matter my findings to point no. 1 in the affirmative and in answer to point no. 2. I passed following order :-

ORDER

1. Application is allowed.
2. T.I.L.R., of Ardhapur is appointed for the following purposes-
 - a] To measure plaintiff's land in Gut no. 6 of village Khairgaon Tq. Ardhapur Dist. Nanded to

the extent of 0 H 15 R. (reference be made to the Government record)

3. Plaintiff is directed to pay necessary fees for appointment of Court Commissioner.
4. T.I.L.R. of Ardhapur is directed to submit his report on or before dt. 18.06.2024.
5. All parties are directed to appear before the T.I.L.R., as and when call by T.I.L.R. office.
6. Copy of this order alongwith copy of Exh. 01 be given to the T.I.L.R. Issue writ accordingly.

Date :- 06/05/2024.

Place:- Ardhapur.

(Q. R. Syed)

Jt. Civil Judge Jr. Div.

Ardhapur.

CERTIFICATE

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

Name of the Jr. Clerk : B. G. Labde

Court of : Jt. Civil Judge Junior Division, & JMFC, Ardhapur Dist. Nanded.

Date of pronouncement of Judgment/Order : 11/07/2023.

Judgment/Order signed by the Presiding Officer : 11/07/2023.

Judgment/Order uploaded on : 12/07/2023.