



CNR No.MHNG100015052017  
Spl.C.S. No.10/2017  
(Old Spl.C.S. No.498/2015)  
Keshav Vs. Shivkumar

**ORDER BELOW EXH.63**

*(Order passed as on 16<sup>th</sup> day of June, 2020)*

[01] The application is about giving directions to the plaintiff for not interfering in measurement proceeding of suit field proposed to be conducted by Deputy Superintendent Office of Land Record Umrer. Perused the application and say given by plaintiff. Heard both sides at considerable length itself before the initiation of lockdown.

[02] The suit is for specific performance of contract and for permanent injunction. Admittedly, during T.I. Exh.5 even though it was the contention of plaintiff that by virtue of agreement to sale taken place with defendant he is in lawful possession of suit field, however this contention is seems to be decline by the court. During order below Exh.5 it has been specifically observed by the predecessor of this court that the plaintiff is not in lawful possession of suit field. Likewise, even though Hon'ble Appellate Court Nagpur vide M.C.A. No.56/2017 has granted the order of injunction in favour of plaintiff however admittedly same is about restrictions against alienation of suit field. Thus, admittedly during M.C.A. No.56/2017 it has not been observed that the plaintiff is in lawful possession of

suit field.

[03] By way of this application it has been contended by the defendant that he being the owner of suit field had applied to carry out measurement of the same. It is averred that as per application of defendant when the measurement team had been to the suit field the plaintiff had obstructed them from carrying out the measurement. It is averred that the plaintiff had no legal right to create obstructions in measurement of suit field. Thus, defendant prayed for passing suitable directions against the plaintiff.

[04] On the other hand, plaintiff has opposed the application and by contending that as the litigation is pending before this court and hence now the defendant has no legal right to carry out any measurement of suit field. It has been alleged that the defendant only for collection of evidence regarding the possession is trying to carry out the measurement. Thus, plaintiff prayed for rejection of this application.

[05] Considering the contentions put fourth by both sides and the nature of proceeding pending between the parties I think when admittedly the defendant is owner of suit field, the defendant has every right to measure his property. Moreover, I think when it is the contention of plaintiff that by virtue of agreement in question he

wants to purchase the suit field, under this circumstances I think the plaintiff should not have any hurdle from measuring the suit field. So far as, physical possession / legal possession over suit field is concern same can be decided on merit. Likewise, the plaintiff has every right to make his written grievance before cadestral surveyor about his physical possession over the suit field. However, the plaintiff has no right to create any obstacles in the work of measurement. Hence, in view of the facts and circumstances of the record at hand I proceed to pass the following order.

**ORDER**

- [01] The application (Exh.63) is allowed.
- [02] Plaintiff is directed to co-operate and not to interfere in measurement proceeding conducted by the officer bearer of Deputy Superintendent of Land Record, Umrer regarding the suit field.
- [03] Plaintiff is at liberty to give his written submissions to the Cadestral Surveyor about his contention regarding the measurement.
- [04] Costs in cause.

Umrer.  
Date : 16/06/2020

**(S. K. Fokmare)**  
Civil Judge Senior Division,Umrer.

**Order Below Exh.63  
Keshav Vs. Shivkumar**

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**Certificate**

"I affirm that the contents of this P.D.F. file order are word to word same as per original order".

Name of Stenographer : **Mr. Mahendranath D. Nagpure.  
Stenographer (Grade III)**  
Court Name : Civil Judge Senior Division, Umrer  
Order checked and signed : 16/06/2020  
on

/home/ubuntu/1-C.J.S.D./ORDERS/1-ORDER BELOW EXH.1/2-SPL. CIVIL  
SUITS/

**Contd..**