

ORDER BELOW EXH.30
(Passed on 24.04.2025)

This application is filed by plaintiff for appointment of Court Commissioner for measurement of plaintiffs' own land and property owned by defendant no.1 and 2 from Deputy Superintendent of Land Record (in short, "DSLRL").

2. Plaintiffs submitted that, they filed the suit against the defendant for possession, declaration and permanent and mandatory injunction. The application of temporary injunction at Exh.5 was allowed by this Court. The plaintiff owned the Land having City Survey No.393 having total plot area 398.32 Sq.m. with Grampanchayat House No. 132. The plot area was shown in the Grampanchayat record is 493.30 Sq.m. The defendant no.1 and 2 owned the plot having City Survey No.392 having total area 132.11 with Grampanchayat House No.131. The plot area was shown in the Grampanchayat record is 166.84 Sq.m. According to the plaintiffs the defendant no.1 and 2 have encroached northern area of plaintiff ownership land which shown in the plaint map vide letters "ABCDE क A".

3. In order to clarify the boundaries of the plot of plaintiffs and defendant no.1 and 2 as per respective records. It is very necessary to measure the both the properties to conform the area of boundaries. The area which actually encroach by the

defendant no.1 and 2 from the plaintiffs owned property needs to be carved out by some third person probably government authority. If such measurement to land record department is effected no prejudice would be cause to either parties. The plaintiff is ready of deposited the necessary Court Commissioner Fee as duty levied from the same for his ownership plot and the defendant 1 and 2 may be directed to opposite the requisite Court fee for measurement for their ownership plot. Hence they prayed for allowed the application.

4. Defendant no.1 and 2 field their no objection for measurement of land through DSLR but further submitted that it can be measured from the cost of plaintiff.

5. As perusal of application of plaintiffs, and submission of defendant it appears that the present suit is filed for possession of encroach land which mentioned in the plaint map as a "ABCDE ऋ A". As per the record there is a dispute between plaintiffs and defendant no.1 and 2 as regarding to the area of their respective plot. Therefore, to decide the actual encroach portion of plaintiff. It is necessary to measure both the properties from land revenue record. Therefore, in my view, it is a settled legal position that, wherein specifically mentioned that the cases of boundary disputes and disputes about identity of the land are the instances when the Court should order local investigation under order-XXVI, Rule-9 of Code of Civil Procedure,1908. In these circumstances, there is dispute between the parties regarding encroachment,

therefore, it is necessary to appoint Court commissioner for joint measurement of properties belong to plaintiffs and defendants to find out encroachment, if any. However, as per submission of plaintiff he will pay only the measurement fees of own plot and defendant no.1 and 2 pay the measurement fees of their own plot. In my view, plaintiffs are came with the case that defendant no.1 and 2 have encroach on their plot. Therefore it is necessary that plaintiffs shall pay the fees of measurement of both the plot therefore I pass following order.

ORDER

1. Application (Exh.30) is allowed.
2. Deputy Superintendent of Land Record is hereby appointed as a Court Commissioner for taking measurement of suit property of the plaintiffs bearing **C.T.S. No.393 area 398.32 sq.m. Grampanchayat House No.132 total area 493.30 sq.m. and** property of defendant no.1 and 2 bearing **C.T.S. No.392 area 132.11 sq.m. Grampanchayat House No.131 total area 166.84 sq.m.** situated at Mouza Tas, Taluka Bhiwapur, District Nagpur.
3. Court Commissioner has directed to measure the land and prepare the measurement map showing the boundaries of both the properties and show the exact and specific measurement of any encroachment and submit his report

along with the map within one month from the date of receipt of commission patra.

4. The plaintiff is directed to pay the requisite fee to the concerned office.
5. The plaintiff and defendant no.1 and 2 are directed to supply the copies of necessary documents, extracts, map etc. for commission work within one week from the date of this order.
6. Issue commission patra after compliance.

Bhiwapur
Date:-24.04.2025.

(S. J. Lad)
Civil Judge Junior Division,
Bhiwapur.

CERTIFICATE

I affirm that the contents of this P.D.F. File of judgment/order are word to word as per original judgment/order.

Name of Stenographer : Ku. K. S. Kathane
to C.J.J.D. & J.M.F.C., Bhiwapur.