


MHNG180000322011 	<u>ORDER BELOW EXH. 101</u> <u>Bhaurao & Ors. Vs. Prabhakar & Ors.</u> (Passed on this 10th March, 2022)
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1. Present application is filed by the plaintiffs under Order 26, Rule 9 of the C.P.C. It is contended in the application that, the plaintiffs are the owner of land bearing Gat No. 189, admeasuring 0.72 R. situated at village Gumthala, Tah. Kalameshwar, District Nagpur. The plaintiffs have made encroachment admeasuring 95' x 60'. The said construction of the plaintiffs is illegal. He has encroached upon the land of plaintiffs. Lastly, the plaintiffs prayed to appoint competent authority as commissioner in order to measure encroachment of the plaintiffs. The defendants filed their say overleaf the application. They contended that, issues are already framed in the matter. This application is filed as belated stage. The application is filed to collect the evidence. Therefore, this application is not tenable. Defendant lastly sought for rejection of application.

2. Heard Ld. Counsel Shri A.N. Jaiswal for the plaintiffs and Shri S.M. Pande for the defendants. Learned Counsel for the plaintiffs argued that the defendant has made encroachment over his property without inspection and measurement of the property, this fact cannot come on the record. In support of his submissions Ld. Counsel for the plaintiff relied upon decision given by *Hon'ble Bombay Court in Ramzan Sheikh Chand Sheikh through his LR's and Others Vs. Panjab s/o. Natuji Gawande,*

2014(6) Mh.L.J. In this case, Hon'ble Bombay High Court held that, in suit involving boundary dispute, it is always desirable to have disputed suit property measured by competent surveyor to find out encroachment and it extend and that, oral evidence can not prove continuous issue conclusively.

3. On the other hand, Learned Counsel for the defendant submitted that this application is not tenable. Measurement map prepared by Government Competent Authority is not filed by the plaintiff. Therefore, contention regarding encroachment is baseless. In this situation appointment of court commissioner is not necessary.

4. I have considered submissions advanced by both the Learned Counsels. Order 26, Rule 9 empowers the Court to issue commission to make local investigation. It is provided under this rule that 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. Certainly, the exhaustive list or purposes for which commission can be issued are not mentioned in this order. Therefore, need of appointment of the Commissioner has to be decided on the fact of each case.

5. Coming towards present case, it can be seen that the main contention of the plaintiff is that the defendants have made encroachment by constructing their house to the extent of 95' x 60' total admeasuring 5700 Sq.Ft. It is the case of plaintiff that, the land on which the defendants constructed their house is infact the part and parcel of their land Gat No. 189. The defendant repeatedly contended that their

construction is as per sanctioned map and they have not made encroachment over their land. It is admitted fact in the case that, there is no map available on record prepared by Government Authority showing alleged encroachment or position of Gat No. 189.

6. It is well settle principle of law that in encroachment cases agreed measurement map is of foremost importance. In the present case, evidence of the plaintiffs is not yet concluded. Direction to competent authority for measurement would help to decide matter on merit. Hence, I am inclined to allow the prayer of appointment of Commissioner. Thus, I pass following order :-

ORDER

1.	T.I.L.R., Kalmeshwar is appointed to measure agricultural land of the plaintiffs bearing Gat No. 189 admeasuring 0.72 R situated at Gumthala, Tah. Kalameshwar, District Nagpur.
2.	T.I.L.R. is directed to show encroachment if any made by the defendants over land Gat No. 189 admeasuring 0.72 R situated at Gumthala, Tah. Kalameshwar, District Nagpur.
3.	The Plaintiffs are directed to deposit necessary fees at the office of T.I.L.R.
4.	Issue commission writ accordingly.

Kalmeshwar.
Date: 10.03.2022.

(H.N. Pole)
Jt. Civil Judge Junior Division,
Kalmeshwar, Dist. Nagpur.

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R.C.S. NO. 18/2011.
Bhaurao & Ors. Vrs. Prabhakar & Ors

ENDORSEMENT

Application Argued on	:	10.03.2022
Order dictated on	:	10.03.2022
Transcription Ready on	:	10.03.2022
Order checked and signed off	:	10.03.2022

CERTIFICATE

I affirm that the contents of the this PDF file order are same word to word, as per the original Order.

Name of the Stenographer :- R.S. Daware (Gr.III)