

: Order Below Exh. 8 :

1. This is an application, for measurement of the disputed land, by appointing a court commissioner.
2. The case, in short, is that,
The applicants are the original plaintiffs and respondent is the original defendant. The appellants/plaintiffs, owned Gat No. 588, 589 and 590 of village Kokangaon, Tal. Niphad. The respondent/defendant is having Gat No. 588 which is towards southern side of the land Gat No 589 and 590. It is alleged that, the defendant has encroached 13 R and 11 R land of Gat No. 589 and 590, respectively. Therefore, Regular Civil Suit bearing No. 57/2010 was filed for removal of encroachment and possession of that portion.
3. The suit was put to trial and the surveyor, who measured the land, was examined. However, the trial court found that the measurement was not done as per the provisions of survey manual and no notice was given to the defendant prior to measurement. So, it was found that the plaintiffs have not proved the encroachment of the defendant over their land. Therefore, suit was dismissed.
4. Being aggrieved by that Judgment and Decree, present appeal is preferred and the application is moved for re-measurement of the land by appointing 'Nimtandar', as court commissioner, for the joint measurement of both the lands of plaintiff and defendant.
5. The respondent has resisted the application, in his say, and submitted that, the application is filed only to delay the matter.

The matter was fixed for hearing since 29/11/2017 and instead of advancing arguments, the application is moved for re-measurement with ulterior motive to delay the proceeding and fill up the lacuna. The applicant wants to create the evidence and no such evidence can be created with the help of commissioner. Hence, requested to dismiss the application.

6. Heard both the parties and perused the papers. The measurement of the surveyor was discarded by the trial court on the ground that the notice of the measurement was not given to the defendant and the entire land survey No. 122 was not measured by the surveyor. Now, the applicant wants to remeasure the land by appointing a technical person, as a court commissioner. He is ready to pay the required fees of commissioner. It is also submitted that, 'Nimtana measurement' of the land will resolve the dispute finally.

7. The measurement of the land is a highly technical matter and only non-fulfillment of formality, like prior notice to the defendant, will not be sufficient to discard the technical measurement. However, as per the principle of natural justice, the person against whom the action is proposed to be taken is required to be made aware of the proposed action and, therefore, in order to give opportunity to the respondent, it is necessary to give him a notice of the measurement and if the commissioner is appointed, and land is re-measured, it will resolve the controversy. Hence, appointment of the commissioner, to measure the entire land of plaintiff and defendant, is essential. The commissioner should give prior notice to all the parties and measure the land as per the old survey record of both the lands and then find out the encroachment, if any.

8. The appellant is ready to pay the commissioner's fees and that is to be deposited in the office of District Inspector of Land Records, Nashik. So, the application is allowed and following order is passed.

: **Order** :

1. Application is allowed.
2. The District Inspector of Land Records, Nashik, is appointed as a court commissioner to measure the entire land, Gat No. 589, 590 and 588 of village Kokangaon, Tal. Niphad. He should measure the lands as per the old survey record and submit the report on or before 11/01/2019.
3. The court commissioner shall give prior notice to all the parties before measurement.
4. The appellant to deposit required fees in the office of D.I.L.R., Nashik, for measurement.
5. Writ be issued to the commissioner accordingly.

Date : 19/11/2018.
Place : Niphad.

(P.D. Digraskar)
Extra Joint District Judge, Niphad.