

: Order Below Exh. 11 :

1. In view of order on (Exh.8), the District Inspector of Land Records, Nashik, was appointed as a court commissioner to measure the lands, Gat Nos. 588, 589 and 590 of village Konkangaon. The commissioner was directed to measure the lands as per old survey record and submit the report.

2. As per the order, the commissioner has measured the lands and submitted the report (Exh.11) along with map of measurement. On behalf of the respondent, objection was raised to this report that, the measurement was not done in compliance of the order and the commissioner has not shown the measurement as per the survey numbers. While converting the survey numbers in to Gat numbers, there was difference in area of the lands and that is not shown by the commissioner. So, it is requested to remit back the report of commissioner for curing the defect.

3. The appellant has resisted the objection and submitted that the measurement was done as a court commissioner and the report of the court commissioner is final one and also conclusive as per O.XXVI R 10(2) of Code of Civil Procedure. So, there is no force in the objection raised by the respondent.

4. Heard both the parties. Perused the papers. Following points arise for determination and answers and reasons thereon are as under :

: **Points** :

1. Is it necessary to remit the report of commissioner back for curing the defects?
2. What order?

: **Findings** :

- : Yes.
- : As per final order.

: **Reasons** :

As to point Nos. 1 & 2 :

5. The report of the commissioner (Exh.11) is a cryptic report. It does not give any details as to the survey numbers measured and its area. Only it is mentioned that, as per the order measurement was done and the map of measurement is sent along with that report. The map of the measurement even though shows the encroachment but the entire area of Gat No. 588, 589 and 590 is not mentioned by the commissioner. The area of the lands prior to consolidation is noted in 7/12 extracts and also the area after consolidation is mentioned. However, the report does not describe as to what was the area prior to consolidation and what was the area after consolidation. Thus, the report of the commissioner is not giving details of the result of measurement and, at this stage, defect is required to be cured by the commissioner himself.

6. As per O.XXVI 26 R. 10(3) of the Code of Civil Procedure, where the court is for any reason dis-satisfied with the proceedings of the commissioner, it may direct such further inquiry to be made as it shall think fit. So also, as per the case of **Vemba Gounder Vs. Pooncholai Gounder**, (AIR 1996 Madras 347), when objection is raised on a report of the Commissioner, it is the duty of the trial court to enter a finding regarding the same before asking the parties to let in evidence on the merits of the case, and the court can remit the warrant to the same Commissioner, for curing the

defects made in the report as mentioned in the objection.

7. Considering this decision of the Hon'ble High Court, in the present case also, there is a defect in the report of court Commissioner which required to be cured in view of observations made earlier. So, answer to point no. 1 is given in the affirmative and following order is passed.

: **Order** :

1. The report of the Commissioner (Exh.11) is remitted back to the Commissioner, for curing the defects. The Commissioner shall give his report, in detail, about measurement done by comparing the area of old survey numbers to new Gat numbers and then report about the encroachment, if any.

3. The commissioner shall also give the details of the area of each Gat numbers measured by him, in the report, and also draw the conclusions.

4. The Commissioner shall submit the detail report on or before 21/12/2019.

Date : 16/11/2019.
Plae : Niphad.

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