

**Order Below Exh. 22****Balkrishna V/s Raosaheb**

1. Read application and say filed by defendant. Heard both the Counsels. Perused record.
  
2. This is an application filed by the plaintiff for appointment of Court Commissioner. Facts of the case are that, plaintiff is a owner of land bearing Block No. 210 and defendant is a owner of land Block No. 209 situated at village Sukene, Tal. Niphad, Dist. Nashik. It is submitted on behalf of plaintiff that, in the year 2008 defendant got measured his land Block No. 209. It has been revealed during the measurement that, the plaintiff has made an encroachment over 69 R land of defendant. In view of the measurement report, defendant had issued notice to the plaintiff, claiming vacant possession of 69 R land. Hence the present suit is filed. By way of filing application at Exh. 22 it is prayed to appoint a Court commissioner to ascertain factual position on the spot.
  
3. The application is resisted by filing say at Exh. 27. It is submitted on behalf of defendant that, defendant got measured his land twice at the hands T.I.L.R., Niphad. Encroachment made by the plaintiff over land Block No. 209 was noticed in the year 2008. Accordingly notice was issued to plaintiff to handover the vacant possession of 69 R land. Since the plaintiff denied to hand over the possession, case bearing No. 17/2009 was filed before S.D.O., Niphad. On enquiry, S.D.O. Niphad, has issued directions to both the parties to get their land measured. Being aggrieved the directions issued, plaintiff filed appeal bearing 89/2010 before Collector, Nashik. Later on said appeal has been withdrawn.

Further it is submitted on behalf of defendant that, the facts which plaintiff want to bring on record, can be brought on record by way of leading oral as well as documentary evidence and for that purpose appointment of Court Commissioner is not necessary.

4. The points for determination alongwith my findings thereon are as under -

<u>S.No.</u>	<u>P o i n t s</u>	<u>F i n d i n g s</u>
1]	Whether the local investigation through court commissioner is necessary for the purpose of elucidating matter in dispute ?	In the Negative
2]	What order ?	Application is rejected

### REASONS

5. This is a suit for declaration and injunction. Perusal of record shows that, there was a measurement of land bearing Block No. 210 at the instance of defendant Raosaheb Bhandare. Map is prepared accordingly. It could be seen from the map filed by plaintiff that, 65 R Land of land bearing No. 209 is encroached by the owner of land Block No. 210. In view of direction given by, S.D.O. while deciding the application, defendant got measured the land Block No. 207 to 210. Same fact is revealed in the measurement done by T.I.L.R. in the year 2010. Everything is thereon record. Admittedly no appeal is filed against the measurement and encroachment shown in the measurement map of year 2008 and 2010. Therefore in my view nothing could be brought on record if the application is allowed. Furthermore it is settled position of Law that, Court Commissioner cannot be appointed for collection of evidence. Hence, I find no substance in the application. The application

being sans merit deserves to be rejected. In result I pass the following order -

**ORDER**

- 1) Application stands rejected.
- 2) No order as to costs.

Date : 16<sup>th</sup> July, 2016  
Place : Pimpalgaon (Baswant)

**(V.C.Gawai)**  
Jt. Civil Judge, Jr. Div.  
Pimpalgaon (Baswant)