

MHNS130007302011

**R.C.S./172/2011**

Sau.Allanur Pyare Khatik

Vs.

Smt.Sonubai Baburao Ranjawe  
etc.

**ORDER BELOW EXH.104 IN**  
**REGULAR CIVIL SUIT NO.172/2011**

01] Defendants have moved this application for appointment of Taluka Inspector of Land Record, Niphad, as Court Commissioner for measurement of disputed properties.

**Contentions of the defendants-**

02] The plaintiff is owner of 256sq.mtr. (33.48 X 7.66sq. mtr.) of City Survey No.32 (total area admeasuring 1482.5sq. mtr). The defendant is owner of City Survey No.73 and 74, out of which the plaintiff in possession of 12 X 3.5sq.mtr. out of City Survey No.74.

03] The disputed property is towards northern side of defendant's property. The Court Commissioner has filed his report and map (Exh.21). The said map is not according to the City Survey map. There is no encroachment committed by the defendants into the plaintiff's property. Both the parties are in possession to the extent of their title. However, in the interest of justice, it is necessary to carryout common measurement of both the properties. It is necessary to fix boundary marks of City Survey No.32 and 74. It will help to determine whether open

space and right to use it as way is existence or not. Therefore, it is prayed to appoint Court Commissioner.

**Contentions of the plaintiff- (As per say Exh.106)**

04] The defendant is not owner of Survey No.73 and 74. Boundaries and boundary marks are not subject matter of this suit. Considering the nature of suit, it is not necessary to appoint Court Commissioner.

**ARGUMENT-**

05] Learned advocate for the defendants argued that admittedly the suit property situates towards northern side of City Survey No.74. The open space between the both the properties is subject matter of the dispute. Map (Exh.21) filed by Court Commissioner is ambiguous.

06] It was further argued that as per revenue record, area of City Survey No.74 extends upto southern boundary of City Survey No.32. As per area mentioned in revenue record as well as area shown in City Survey map, defendant's ownership extends over the disputed open space. The said open space is part and parcel of City Survey No.74. This fact will come on record only after joint measurement as per the revenue record.

07] It was further argued that identification and fixation of boundary marks is necessary in order to decide controversy

between the parties. Reliance was placed upon following Judgments-

- (i) Rawanbhapu Bhimrao Deshmukh Vs. Bapura Rangrao Deshmukh, 2023 CJ (Bom) 1079.
- (ii) Kashinath Chinduji Shastri Vs. Haribhau Nathuji Bawanthade, 2004(2) Mh.L.J.
- (iii) Baban Madhavrao Malpe Vs. Yogeshwar, 2022 CJ (Bom)389.
- (iv) Madhukar R Javle Vs. Baskar Ramnath Shibad, Laws (BOM) 1995 9 35.
- (v) Rambhau Daulatrao Mule Vs. Balabhau Pandharinath Kachre, 2019 DGLS (Bom) 1583.
- (vi) Ramzan Sheikh Chand Sheikh Vs. Punjab Nathuji Gawande, LAWS (BOM) 2014 4 231.
- (vii) Raghunath Kashinath Chavan Vs. Sakharam Maroti Chavan, LAWS (BOM) 2019 1 156.

**08]** On the other hand, learned advocate for the plaintiff argued that already Court Commissioner has submitted his report and rough map. The suit is for declaration of easementary right of way and for injunction to not to encroach upon the said way. There is no dispute about boundaries of the suit properties.

**09]** It was further argued that the plaintiff has denied defendant's title over Survey No.74. No purpose would be served by measurement of Survey No.74. The burden of proving existence of open space and plaintiff's right over the said way is

in facts in issue. Therefore, appointment of Court Commissioner for joint measurement is not necessary.

**DISCUSSION-**

10] As per *Order 26 Rule 9 of Code of Civil Procedure, 1908*, the Court may direct local investigation for the purpose of elucidating any matter in dispute. The plaintiff has claimed that the disputed property i.e. open space, adjacent to the defendants property, is being used as a way. The plaintiff has claimed easementary right over the said way. The plaintiff has further claimed that the said space is part of Survey No.32.

11] The material issues (Exh.31) in this suit are existence of way, right of easement and obstruction of easement. There is no case of boundary disputes and incidental encroachment over another property. The plaintiff has claimed injunction restraining the defendants from causing obstruction to easementary rights. The plaintiff has claimed that the said obstruction is being caused by way of construction on the disputed way. Therefore, merely because word “encroachment” is used, it cannot be said the it is an boundary dispute between the parties.

12] In view of above discussion, it is clear that joint measurement of Survey No.32 and 74 would not serve any purpose in respect of facts in issues. Judgments relied upon by

the defendants are in respect of boundary disputes and encroached committed upon adjoining property. Those judgments are not applicable to the facts of present suit. The application, therefore, deserves to be rejected. Hence, I pass following order-

**ORDER**

Application (Exh.104) is hereby rejected.

Sd/-

**(A. J. Patil)**

Civil Judge, (Jr. Dn.)

Pimpalgaon (B).

Dated : 09/04/2026

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