

**Order below Exh. 25**  
(Passed on 29<sup>th</sup> November, 2022)

1. Instant application (Exh.25) is moved by the plaintiffs for appointing the Court Commissioner directing him to conduct measurement of suit properties and after measuring the same, submit measurement-sheet along with his Report & Map, before the court. Plaintiffs submitted that, they have filed this suit for declaration and perpetual injunction, wherein, defendants have filed their written statement (Exh.31). Plaintiffs further submitted that, it is necessary to appoint court commissioner for elucidating the fact regarding whether there is a road in between Gat No. 1923 and for elucidating other factual position in the suit premises. For deciding the instant suit it is necessary to bring all these facts before the Court. Plaintiffs further submitted that, for bringing the real position before the court and for proper adjudication of this suit, it is necessary to appoint a court commissioner who shall inspect the area and prepare the map and report after the inspection. Therefore, plaintiffs finally submitted that, a court commissioner may kindly be appointed and he be directed to inspect the area and prepare map and submit his report. Therefore, plaintiffs finally submitted that, it is necessary to get suit land measured through T.I.L.R., Chandwad. Plaintiffs are ready to pay the measurement fees to T.I.L.R. Office.

2. Learned Advocate for defendants by filing his Say below Exh. 38 submitted that, the application (Exh.25) is not tenable in the eyes of law. They further submitted that, the application filed by plaintiffs below Exh. 25 is filed only with a view to collect evidence through Court, which is not permissible. Hence, the application (Exh.25) is devoid of any merit and it is liable to be rejected.

3. Perused the application and Say filed thereon. Heard the learned Advocates of both the parties.

4. The present suit is filed by plaintiffs for declaration and permanent injunction. On perusal of the pleadings of the plaintiffs, it appears that there is a dispute of roadway between the parties.

5. In the present suit, considering the above pleading of plaintiffs, it appears that, unless and until the factual position of suit properties are not determined, it is not possible to decide the fate of this suit. Therefore, for elucidating the matter in dispute, measurement of entire suit properties is essential. Hence, I am of the view that, this is a fit case to appoint Commissioner by virtue of Order 26 Rule 9 of C.P.C., directing him to measure entire suit properties and after measuring the same submit measurement-sheet alongwith his Report and

map, before the court. Hence, considering the discussion made above, I am of the view that the application below Exh.25 is to be allowed. Hence, I proceed to pass following order.

**ORDER**

- 1] Application below Exh.25 is allowed.
- 2] Taluka Inspector of Land Records, Chandwad, is hereby appointed as Court Commissioner in the matter.
- 3] Taluka Inspector of Land Records, Chandwad, shall conduct measurement of Gat No. 1932/1, 1932/2 & 1923 of Mouje Wadner Bhairav, Tq. Chandwad, Dist. Nashik and thereafter record his observations in his report as per para Nos. 3 & 4 of the instant application (Exh.25).
- 4] Court Commissioner, is directed to show the factual position in respect of road, trees, crops, electric pole, well, house etc., in the suit properties.
- 5] Plaintiffs shall deposit the Commissioner fees

directly to the office of Taluka Inspector of Land Records, Chandwad, Dist. Nashik.

- 6] After payment of Commissioner Fees, issue Commissioner writ.

Date: 29.11.2022.

**(Prasad B. Joshi)**  
Civil Judge (Jr.Dn.), Chandwad.