

Order below Exh. - 22 in R.C.S. No. - 23 of 2016

Sukdeo Kedu Shinde & ors. --- plaintiffs.

v/s.

Devman Ravba Shinde & Ors. --- defendants.

1] The plaintiff has filed this application under order 26 Rule 9 of the Code of Civil Procedure for appointment of commissioner to carry out the local inspection of the suit property through the TILR office and for recording the finding in respect of the same. The plaintiff has filed the original suit for perpetual injunction.

2] In support of the application, the plaintiff has submitted that he has filed the suit for injunction against defendant nos. 1 and 2 of the embankment of Gut No. - 35/1 and 35/2 of plaintiff. He also asked injunction against defendant nos. 1 to 8 from lifting the water from the common well of his 1/4th share. He further submitted that, defendants denied that they have disturbed any embankment of the plaintiff. He further submitted that the court commissioner is to be appointment for gut No. - 35 as per 7/12 extract and to find out the encroachment portion. He further submitted that, after measurement of the suit property, the factual position of the encroached area of the suit property will come on record. This factual position is very material for deciding the suit on merit and it would elucidate the matter in question. Therefore, the plaintiff has prayed for allowing the application.

3] The defendants vide their say at **Exh.- 25** opposed the application by submitting that the plaintiff has filed the present suit for perpetual injunction. They further submitted that they did not disturb and portion of embankment of the plaintiff. The TILR already take measurement of the said land bearing No. - 3260/2015 and 3270/2015

and fixed the boundaries between Gut No. - 33 and 35/A. The present plaintiff was the applicant and accordingly the measurement was take place by TILR. They did not make any encroachment. Hence, they prayed for rejection of the application of plaintiff.

4] Considering the pleadings of the suit and documents produced in support of it, following points arise for my determination to which I record my findings thereon for reasons to follow :

	<u>POINTS</u>		<u>FINDINGS</u>
1	Whether the appointment of commissioner for joint measurement of the suit properties is just and proper in the facts and circumstances of the case ? In the negative.
2	What order ?	..	As per final order.

REASONS

5] Heard learned counsel for plaintiffs Shri. S.A. Shelke and learned counsel for defendants Shri. N.S. Patil.

6] **Order 26 Rule 9 of the Code of Civil Procedure** contemplates appointment of court commissioner for the purpose of elucidating the matter in dispute. the plaintiff has submitted that he has filed the suit for injunction against defendant nos. 1 and 2 of the embankment of Gut No. - 35/1 and 35/2 of plaintiff. He also asked injunction against defendant nos. 1 to 8 from lifting the water from the common well of his 1/4th share. He further submitted that, defendants denied that they have disturbed any embankment of the plaintiff. He further submitted that the court commissioner is to be appointment for

gut No. - 35 as per 7/12 extract and to find out the encroachment portion. He further submitted that, after measurement of the suit property, the factual position of the encroached area of the suit property will come on record.

7] The defendant submitted that, the TILR already take measurement of the said land bearing No. - 3260/2015 and 3270/2015 and fixed the boundaries between Gut No. - 33 and 35/A. The present plaintiff was the applicant and accordingly the measurement was take place by TILR. They did not make any encroachment.

8] It appears that plaintiff have already moved an application before the TILR for the said land and accordingly, the TILR done that measurement bearing No. - 3260/2015 and 3270/2015. The said fact is not stated by the plaintiff in his plaint for his application. Even he did not file the copy of the said measurement alongwith other documents. He also failed to show the exact area encroached by the defendants. His prayer is very vague in the plaint and in this application.

7] It is admitted facts that plaintiff has every right to get measured his land from the concern authority. He also have right for Nimtana Mojni, if anything wrongly measured by TILR. The plaintiff never thought it proper to challenge the previous measurement before appropriate forum at any point of time. Considering the long lapse of time after the said measurement the plaintiff cannot be extended with the helping hand of grant of the said application. Without approaching to the proper authority plaintiff wants to taken the help of court for collecting evidence, which is not permissible in eye of law. Already the TILR measured the land of plaintiff and defendant bearing No. - 3260/2015 and 3270/2015. Plaintiff failed to show what is illegal or mistake committed by that surveyor. Therefore, I am of the opinion that

the application deserves to be rejected. Therefore, I proceed to pass following order -

ORDER

- 1] Application Exh. - 22 stands rejected.
- 2] Costs in cause.

Chandwad.
Date : 10/08/2017

(K.G. Chaudhari)
Civil Judge, J.D., Chandwad,
Dist-Nashik.