

ORDER BELOW EXHIBIT 74

This is an application by the plaintiffs seeking appointment of Court Commissioner for measurement and fixation of boundaries and find out the encroachment as per Order XXVI Rule 9 of the Code of Civil Procedure.

02. It is the case of the plaintiffs that the plaintiffs are owners and in peaceful possession over an area adm. 1H-33R, in survey No.10 (Old survey No.105) situated at Village Sonnewadi, Tal. Bhoom & Dist. Osmanabad. Defendants are adjoining land owners of the suit property in survey No.10 (old survey No.5) and of survey No.9 (old survey No.104). However, the defendants have in several instances obstructed the peaceful possession of the plaintiffs over the suit properties. Moreover, defendant No.1 & 2 have encroached the land of the plaintiffs from eastern side while defendant No.3 has encroached from western side. Therefore, earlier plaintiffs have get their land measured from land revenue inspector on 25.03.2005 in which the encroachment at the hands of defendants have been revealed. Hence, plaintiffs had filed the present suit for recovery of encroached land from the defendants.

03. It is the case of the plaintiffs, in the present suit the oral evidence of both the parties have been concluded and matter is reached for the final argument. However, the land of both the parties were required to be measured to find out the exact and real encroachment over suit land at the hands of defendants. According to plaintiffs, there are difference of contention between plaintiffs and

defendants relating to boundaries of suit properties. Hence, in order to bring real facts before this Court and also in order to adjudicate the claim of the plaintiffs properly, it is necessary to appointment a Court Commissioner for measurement of the suit property to measure the land of plaintiffs and defendants jointly. Hence, he prayed for allowing the present application.

04. The present application is resisted by the defendants vide their reply at Exh.76. According to these defendants, they have not encroached the land of the plaintiff from any side. Plaintiffs have already done the measurement of their land and on the basis of said measurement, they have filed the present suit. However, the report of said measurement is not favorable for the plaintiffs and therefore, present application has been moved to get the report as per the wish and will of the plaintiffs. Almost 13 years have been lapsed after filing the suit. The suit is listed for the final argument and in such stage, plaintiffs preferred to measure their land instead of arguing the suit finally. The conduct of the plaintiffs shows that such application is moved to prolong the suit.

05. It is further submitted by the defendants that the earlier measurement report is very much clear. The said report creating the hurdle in the path of plaintiffs and therefore, they moved this application. The statement of the witnesses on the point of encroachment are going against the plaintiffs and to full fill the lacuna in their case. Earlier application of the plaintiff to recall the measurement surveyor had been rejected by the Court and therefore, to call measurement surveyor again for examination, this application

is filed. Finally they submitted to reject the application by considering all supra points raised by the defendants.

06. Perused the record and proceeding. It is necessary to note that as per Order XXVI Rule 9 a Court commissioner can only be appointed if the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute between the parties. However, a commissioner for local investigation shall not be in any case appointed if his findings amount to collection of evidence on behalf of any party. However, it is necessary to note that the present suit is for recovering the possession of encroached land from the defendants.

07. The learned advocate for the defendants Mrs.A.B.Khose who argued that the land of the plaintiffs and defendants are in same survey i.e. survey No.10. The survey No. 10 is already measured by the plaintiffs and therefore, there is no need for remeasurement or joint measurement. Hence, she prayed to reject the application. On the other side, the learned advocate for the plaintiffs Mr. S. B. Humbe argued that in order to bring the real facts before this Court, it would be necessary to joint measurement of land of both the parties by appointment of a Court Commissioner to find out the exact encroachment by the specific defendant. Hence, he prayed to allow the application.

08. Considering the aforesaid facts, it is necessary to note that in suit for encroachment over agricultural land, it is very important that, joint measurement of both lands along with their

adjourning lands are to be carried out, so that the exact extent of encroachment could be brought on record. This is very important to enable the Court to pass factual and executable decree. Unless joint measurement by an expert is carried out, enforceable decree of possession cannot be passed. In the case in hand, measurement in regard to alleged encroachment is carried out by the plaintiffs before filing of present suit. The measurement report of cadastral surveyor is on record and he is also examined by plaintiffs. The measurement report clearly shows that only the land of the plaintiffs have been measured by the surveyor. Moreover, the measurement of the land of the plaintiffs only will not be helpful to come on any conclusion in respect of encroachment. Thus, the appointment of Taluka Inspector of Land Records is necessary to elucidate the matter in dispute to find out exact encroachment by the specific defendants. Therefore, joint measurement of survey of both parties will not amount to collection of evidence.

09. In view of above discussions, I am of the opinion that the present application is liable to be allowed. Hence, following order is passed.

ORDER

1. The application at **Exh. 74** is allowed.
2. The Taluka Inspector of Land Records, Bhoom is hereby appointed as Court Commissioner.
3. The Court Commissioner is directed to carry out measurement of whole survey No.09 (old survey No.104) and survey No.10

(old survey No.105) and demarcate the suit property at survey No.10 (old survey No.105), admeasuring 1H-33R, situated at Village Sonnewadi, Tal. Bhoom & Dist. Osmanabad and find out encroachment if any.

4. The Court Commissioner is directed to carry out measurement after giving in writing notice to both the parties regarding day and time of his visit for commission work to the suit property and asking them to remain present at the time of commission work at the suit property.
5. The Court Commissioner is directed to submit his detailed report and map within three months from the date of receipt of commission writ.
6. The plaintiff is directed to deposit the necessary fees of measurement in the office of Land Records and file an affidavit about its compliance.
7. Issue commission letter along with all the necessary documents accordingly to the Court Commissioner.
8. The cost shall be paid by the plaintiff on or before next date, in case of failure the application will stand rejected.

Date: 11.04.2023

(Husna R. Khan)
2nd Jt. Civil Judge, Junior Division,
I/c Jt. Civil Judge, Junior Division,
Bhoom.

Certificate

I affirm that, the contents of this P.D.F. file Order are same, word to word, as per the original Order.

Name of Stenographer	...	N. V. Koli Stenographer Grade-3
Court	...	I/c Jt.CJJD & JMFC Bhoom
Date	...	11-04-2023
Order signed by the Presiding Officer on	...	11-04-2023
Order uploaded on	...	11-04-2023