

MHOS130011942018



R.C.S.No. 487/2020
Rajkumar/Sharda

Order Below Exh.20

Plaintiff has moved application for appointment of Court Commissioner to measure the land gat no.20 adm. about 7 H 8 R situated at village Ida, Tq.Bhoom. To this application defendants have filed their say below Exhibit 22 and strongly objected the application of plaintiff.

2. By way of this application plaintiff submitted that, the suit is instituted declaration and perpetual injunction. It is contended by plaintiff that, he is owner and possessor of land gat no.20 area 1 H 80 R. The property 1 H 80 R is ancestral property of plaintiff. The name of plaintiff recorded on 7/12th extract. There was a *Bandh* from East side as North-South. But, defendants have tried to destroyed the boundary marks in the suit property. The defendants have planted tree by digging pit in suit land. Defendants also tried to encroach over the plaintiffs property. The defendants caused obstruction and interference to the property of plaintiff. The T.I. application of plaintiff came to be allowed. By way of measurement the actual position of suit property will come before the court. The fixation of boundary is also necessary in the suit property. The Dy.S.L.R. is expert in the measurement who may carry out measurement upon the direction of this court. Plaintiff lastly prayed to allow the application.

3. Defendants objected the application on the ground that, application is not tenable in the eye of law. It is contended by defendants that, the plaintiff has moved application below Exh.5 for interim relief which came to be allowed but defendants have preferred an appeal against the order passed below Exh.5. The defendants never tried to destroyed the *Bandh*. The defendants not made any encroachment over the property of plaintiff. There is river going from the property of plaintiff. The land area 10 R or more is *Potkharab* from the land of plaintiff. The plaintiff moved this application for collection of evidence. The plaintiff is not owner to the extent of area 1 H 80 R. The application is liable to be rejected.

4. I have heard learned advocates for respective parties at considerable length.

5. Learned advocate for plaintiff Shri.R.N.Humbe submitted that the plaintiff is owner and possessor of suit property. The suit is instituted for declaration and perpetual injunction. The contention of plaintiff is that, defendants have made encroachment over the suit property. The defendants also tried to destroyed the *Bandh* in the suit property. The measurement of land gat no.20 is necessary.

6. Learned advocate for defendants Smt.A.B.Khose submitted that, the defendants filed their written statement. The application is moved for collection of evidence. The river is going from the land of plaintiff. The land area 10 R or more is *Potkharab* from the land of plaintiff. The said land is in river. The application moved by plaintiff to grab the property of defendants. The measurement of defendants land is necessary prior to the

measurement of plaintiffs land. Lastly learned advocate for defendants argued that, application may kindly be rejected.

7. I have gone through the argument advanced by learned counsels for respective parties. It appeared from the record that suit is instituted for declaration and perpetual injunction. It is the specific contention of plaintiff that, the defendants have made encroachment in the suit property. The defendants also tried to destroyed the *Bandh* by J.C.B. machine. The defendants planted trees in the land of plaintiff. Firstly, defendants dig pit by J.C.B. machine for planting trees. Per contra, it is the contention of defendants that, they have never made any encroachment over the property of plaintiff. The plaintiff has no title over area 1 H 80 R. It is the dispute between the parties regarding measurement and boundary dispute. Under such circumstances, considering the nature of suit for declaration the report of measurement by cadastral surveyor will helpful to decide the suit on merit. In case of boundary dispute the objection of collection of evidence is not tenable. The actual position of encroachment if any will come before the court as per the allegation of both parties. It is seen that, land area 1 H 80 R recorded in name of the plaintiff as per Exh.9 the 7/12th extract of suit land. The land 5 H 38 R recorded in the name of defendants. Hence, in the interest of justice the appointment of Dy.S.L.R. Bhoom is necessary for measurement in land gat no.20 who shall visit in the said gat number and will measure property and submit report accordingly. The Dy.S.L.R. is expert in measurement. Therefore, direction to measure the specific property firstly is not required to be given. He will act according to revenue record of suit property for measurement of

whole gat no.20. Hence, application deserves to be allowed. I proceed to pass the following order-

<u>:- O R D E R :-</u>	
1	Application Exhibit No.20 is allowed.
2	Dy.S.L.R, Bhoom is hereby appointed as a court commissioner to conduct measurement of land gat no.20 and shall submit report showing alleged encroachment, if any over to the land of plaintiff in gat no.20.
3	Dy.S.L.R, Bhoom is directed to demarcate the boundary marks in property of plaintiff and defendants and submit his report along with map as early as possible.
4	The plaintiff shall deposit necessary fees to the office of Dy.S.L.R, Bhoom within the period of 30 days from this order and shall intimate to this court by filing copy receipt of fees paid by her.
5	Issue commission writ accordingly.

Date:- 14.01.2022

(K.K.Khomaee)
Jt.Civil Judge J.D., Bhoom

C E R T I F I C A T E

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

Name of Stenographer	:-	M.K.Shinde
Court	:-	Jt.C.J.J.D., Bhoom, Dist. Osmanabad.
Date	:-	14.01.2022
Order signed by the Presiding officer on	:-	14.01.2022
Order uploaded on	:-	15.01.2022