



R.C.S. No.879/2022

Abdul Pathan /
Bhagwat Salunke

ORDER PASSED BELOW EXH.31

This is an application moved by plaintiff for appointment of Court Commissioner as per Order XXVI Rule 9 of Code of Civil Procedure.

02. The plaintiff has filed the suit for the relief of declaration of perpetual injunction against defendants in respect of land Gut No.420 admeasuring area 57R situated at Mouje Chincholi, Tal. Bhoom. Gut No.552 is situated at the western side of Gut No.420. According to plaintiff, there is a boundary dispute between Gut No.420 and 552. Hence, in order to ascertain the area of the respective lands the plaintiff prayed for the appointment of Court Commissioner.

03. Application is contested by defendant on the ground that, already the plaintiff has measured his land Gut No.420 and accordingly the map was prepared. According to defendant, since already the measurement was carried, there is no need to appoint the commissioner to measure the land afresh. Hence, defendant made for rejection of the application.

04. Heard both sides. Perused the record. There is no dispute as to the ownership of plaintiff over the land Gut No.420. Gut No.552 is owned by the defendant. Considering the pleadings of both parties there appears to be the boundary dispute between the parties. There is a dispute in regard to the existence of Bhoom-Rameshwar road. Considering the peculiar nature of the case, I find that, measurement of land to the Court Commissioner is the best way to decide the

dispute between the parties. It is true that, the plaintiff got measured the land Gut No.420 already. However, it is well settled that, while measuring the land adjacent Gut number is too also required to be measured.

05. In such controversy in my opinion local investigation is a best way to find out the exact portion of the land held by the plaintiff and defendant. Considering the peculiar nature of the case in hand, the evidence, can be obtained only by making local investigation. It will assist the parties in prosecution of their case. Therefore, in my opinion the local investigation is proper and requisite for the purpose of elucidating the matter in dispute as regards to the fact of encroachment. Considering the boundary disputes it would be appropriate to measure entire land Gut No.420 and 552 situated at Mouje Chincholi, Tal. Bhoom in order to ascertain the accurate area of the land. Hence, the following order is made.

ORDER

1. Application is allowed.
2. The TILR, Bhoom is hereby appointed as a Court Commissioner to measure the land in Gut No.420 & 552 situated at Mouje Chincholi, Tal. Bhoom, Dist. Osmanabad and to fix the boundaries of the suit properties.
3. Plaintiff shall pay the Court Commissioner fees as per rules.
4. Commissioner is directed to make local investigation within 30 days from the date of communication of the order.
5. Issue Commission writ accordingly to the Court Commissioner of P.F.

(Smt. S. J. Patil)

Jt. Civil Judge Jr. Div., Bhoom

Date:- 15.03.2024

CERTIFICATE

I affirm that the contents of this P D F file judgment / order are same word to word as per the original judgment /order.

Name of Stenographer	:	N. V. Koli Stenographer Grade-3
Name of Court	:	Jt. Civil Court J.D., Bhoom Tal. Bhoom Dist. Osmanabad.
Order date	:	15.03.2024
Order signed by the Presiding Officer on	:	15.03.2024
Order uploaded on	:	15.03.2024