

ORDER BELOW EXH. 37

1) Perused the application filed by plaintiff for measurement of the suit properties bearing gat no. 79 admeasuring 01 H. 94 R, land gat no. 80 admeasuring 00 H. 52 R. and 40 R, land gat no. 81 admeasuring 01 H. and 01 H. 6 R situated at Lohara, by appointing Dy. Superintendent of Land Records as Court Commissioner.

2) It is contended that, plaintiff's has filed suit for perpetual injunction and restraining defendants from committing encroachment upon suit properties. It is contended that, defendants have cross-examined plaintiff and asked some question in respect of measurement. Therefore, it is necessary to measure suit properties and fix the boundaries and prayed for allowing application.

3) Defendant no. 9 and 10 resisted application on the ground that, plaintiff's have filed false and frivolous application without any authority. If plaintiff's were suspicious about the encroachment then they have to get measure suit properties before filing suit. Present suit is for perpetual injunction therefore it is not necessary to measure suit properties by appointing commissioner. Plaintiff's are not a owner of suit property, defendants have challenged entries

made in favour of plaintiff in the year 2004 itself, before Superintendent of land record. Plaintiffs are not in possession over the entire suit properties and same has been admitted during the cross-examination. Plaintiffs want to withdraw said admission and prayed for rejection of application.

4) Heard plaintiffs and defendants at length. Perused the plaint, record.

5) Learned counsel for plaintiffs placed reliance on following ruling:-

1) Bhaskar Baliram Mali Vs. Vishwanath Narayan Mali Writ Petition no. 8263/2019 decided on 30/07/2019.

2) Sanjay Namdeo Khandare v. Sahebrao Kachru Khandare reported in 2001(2) Mh.L.J.959.

3) Chandrakant Kashinath Dike v. Smt. Satyabhama Vishwanath Dike writ petition no. 8877/2013 decided on 17/01/2014.

4) Ramkrishna Santu Kakad v. Reojee Kakad writ petition no. 2749/2012 decided on 04/03/2013.

5) Pandurang Chandak v. Sandip Pensalwar writ petition no. 3456/2007 decided on 27/11/2008.

6) Dnyandeo Vithal Salke Vs. Dagadu Kadar

Inamdar reported in 2017 (3) Mh.L.J. 314.

7) Dattatrya Namdeo Kalke Vs. Bapu Bhairu

Bhivungada reported in 2015(1) ALL M.R.5

8) Meenadevi Vasdev Vatnani Vs. Narmadabai

@Leelabai Zanzwar reported in 2015(6) ALL M.R.25.

9) Malhar Ganpat Bokephod Vs. Shivaji Vishwanath

Pawal reported in 2014(3) ALL MR.698

I have gone through the aforesaid rulings:-

6) The present suit is for perpetual injunction on the basis of ownership. Plaintiff no. 2 Vijay Laxman Dabade has filed evidence affidavit below exh. 29 and he has been thoroughly cross-examined by defendants. Already trial has been commenced. Plaintiffs have prayed for appointing court commissioner to measure the suit property to bring out actual position on record.

7) Hon'ble Lordship in Yeshwant Ghuse v. Vithobaji Ladekar (2009 CJ(Bom.) 1861) held that, "*It is settled position of law that under O 26 R 9 of the Code of Civil Procedure, the court has discretion to order local investigation. The object of local investigation is not so much to collect evidence which can be taken in the court, but obtain evidence which from its peculiar nature can only be had on the spot. Cases of boundary*

disputes and disputes about identity of lands are instances when a court should order local investigation under O 26 R 9 of the Code. In order to determine whether there has been an encroachment, it is always desirable to get the fields measured by an expert and find out exact area encroached upon, oral evidence cannot conclusively prove such an issue. ”

8) Defendants contended that they have challenged revenue entries before District Superintendent of land record but copies of the same have not been placed on record.

9) In the present suit dispute between parties are of area of the property and encroachment committed upon suit property. Documents on record discloses that, suit properties have been purchased by plaintiffs. Even evidence of plaintiffs commenced. Dy. Superintendent of land record is expert to find out the exact position of properties of plaintiffs. Considering the real dispute between the parties, the measurement of the properties of plaintiffs would certainly help in elucidating the matter in dispute. Hence, the application deserves to be allowed as follows:-

ORDER

- 1) The application is partly allowed.
- 2) The Dy. Supt. of Land Records, Paranda is appointed

as Court Commissioner for measurement of the suit properties of plaintiffs situated at Lohara bearing gat No.79 amdeasuring 01H. 94R., land gat no. 80 adm. 00 H. 52 R. and 40 R., land gat no. 81 adm. 01 H. and 01 H. 06 R.

- 3) He is further directed to fix boundaries of the properties of plaintiffs prepare map and submit its report at the earliest.
- 4) The plaintiffs to pay requisite fees as per rules and submit the receipt of fees deposited in the court for information.

Sd/-

Date:- 23/10/2021

(**Sopan P. Rachkar**)
 2nd Jt.Civil Judge J.D.,Paranda

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 the Stenographer	Shri. V.N.Phurade
Name of Court	Shri. S.P.Rachkar, 2 nd Jt. C.J.J.D. and J.M.F.C., Paranda
Date of Dictation	23/10/2021
Judgment signed by the P.O. on	23/10/2021
Judgment/Order uploaded on	23/10/2021