

R.C.S.No.243/2013
CNRMH0S150003992013
Madhukar/Dnyandeo

ORDER BELOW EXH.70

1) Perused the application filed by defendant no. 7 and 8 for measurement of the property bearing Sy. no. 90/1 by appointing Dy. Superintendent of Land Records as Court Commissioner. It is contended that defendant no. 7 and 8 have filed R.C.S.No.263/13 against plaintiff for removal of encroachment and perpetual injunction. Plaintiffs and other defendants are owners of property bearing gat no. 90/1. It is contended that plaintiffs have committed encroachment upon the property of defendant no. 7 and 8. Plaintiffs resisted application on the ground that defendant no. 7 and 8 have filed application below Exh. 20 in R.C.S.No.263/13 for measurement of land Sy.no. 90/1/D and 90/1/E jointly through Dy. Superintendent of land record and same has been rejected on the ground that said dispute is not a boundary dispute but it is a declaration of rights. Defendant no. 7 and 8 have not challenged said order before appellate court. Already advocate has been appointed as a court commissioner to bring out actual position on record. Defendant no. 7 and 8 have wrongly objected said report and prayed for rejection of application with costs.

2) Heard plaintiffs and defendant no. 7 and 8 at length.

Perused the plaint, record, plaintiff RCS No. 263/13 and order passed below Exh. 20.

3) Learned counsel for plaintiffs placed reliance on following rulings:-

1) Ramchandra Baburao Jagtap v. Appasaheb Sheku Shinde Writ Petition no. 6075/2013 decided on 19/09/2013.

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.

4) Learned counsel for defendant no. 7 and 8 placed reliance on following rulings:-

1) Malhar Ganpat Bokephod v. Shivaji Pawal reported in 2014 (3) All MR 698.

2) Bhagwat Math v. Madhav Memorial Pathagar reported in 2006 (9) SCC 221.

I have gone through the aforesaid rulings:-

5) The present suit is for perpetual injunction on the

basis of ownership. Defendant no. 7 and 8 have filed suit against plaintiff bearing RCS no. 263/13 for removal of encroachment and perpetual injunction. Plaintiffs in the present suit have filed application for appointment of court commissioner and accordingly same has been allowed and advocate as a court commissioner visited spot and filed report on record. Same has been challenged by defendants therefore again advocate appointed as a court commissioner to re-visit and submit report. Accordingly, advocate court commissioner has visited and filed report on record and same has been challenged by defendants.

6) Hon'ble Lordship in *Malhar Bokephod v. Shivaji Pawal*(cited supra) held that, *"The object of local investigation is not so much to collect evidence which can be taken in court, but to obtain evidence which found 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 investigation under O 26 R 9 of the Code. The disputes regarding the boundaries can be best adjudicated by taking the assistance of experts such as the T.I.L.R., who on measurement can express his opinion."*

7) In the present suit as well as in RCS no. 263/13 dispute between parties are of title of property and area of the

property. My learned predecessor in order below Exh. 20 in RCS No.263/13 observed that, “If primary report of advocate court commissioner in respect of inspection of ground realities whether there exists old bund and trees, cart-way or destruction of boundary marks is called it would help to decide future course of action.” and rejected the application for appointment of court commissioner i.e. T.I.L.R.

8) Documents on record discloses that land Sy.no. 90/1 have been divided in to five parts i.e. 90/1/A to 90/1/D. Defendant no. 7 and 8 are purchasers of the property in land Gat no. 90/1/D admeasuring 02H 10R. The plaintiffs appear to be neighbourers of their property. Hon'ble Lordship in aforesaid citations submitted by plaintiffs have observed that, court commissioner cannot be appointed for the purpose of collection of evidence, but in present suit dispute between parties are in respect of situation of properties and there boundaries. Therefore, with respect ratio laid down by Hon'ble Lordship in citations submitted by plaintiffs are not helpful as facts defer. Dy. Superintendent of land record is expert to find out the exact position of properties of plaintiffs and defendants. Considering the real dispute between the parties, the measurement of the properties of plaintiffs and defendants jointly would certainly help in elucidating the matter in dispute. Hence, the application deserves to be allowed as

follows:-

ORDER

- 1) The application is allowed.
- 2) The Dy. Supt. of Land Records, Paranda is appointed as Court Commissioner for measurement of the suit properties of plaintiffs situated at Bhotra bearing Sy.No.90/1.
- 3) He is further directed to fix boundaries of the properties of plaintiffs and defendants, prepare map and submit its report at the earliest.
- 4) The defendant no. 7 and 8 to pay requisite fees as per rules and submit the receipt of fees deposited in the court for information.

Date:- 14/02/2019

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