

**ORDER BELOW EXHIBIT NO. 14**

**Regular Civil Suit NO. 153/2022 Khandu Vs. Kashinath**

**CNR No. MHPA140011822022**

Perused the application, say filed on behalf of defendant no. 3, 4 and 8.  
Perused record. Heard.

02- Plaintiffs have filed this application with request to appoint cadastral surveyor Deputy Superitendant of Land records , Purna as Court Commissioner to measure the suit land Gut no. 106 admeasuring 00H50 R Biunded as

East- Land Of Bhaskarrao Suryawanshi, West: Road, South: Bhaskarrao Suryawanshi, North: Land of Ganpat Suryawanshi and to submit the report thereof.

03- Defendant no. 1,2,6 and 7 had consented for measurement of the suit property. Defendant No.3,4 and 8 have opposed the application by submitting that, application is premature since the plaintiffs have not yet adduced their evidence. Contents of the application indicate at the attempt of the plaintiffs to collect the evidence of possession and Court Commissioner can not be appointed for such purpose. Sketch map is not placed on record by plaintiff to show the location of the suit land. It is not made clear in the application as to how and in what manner proposed Court Commissioner will assist the court in adjudicating the matter. Therefore, it is requested to reject the application.

04- Question is whether court commissioner can be appointed in the facts and circumstances of this suit.

05- Plaintiff pleadings show that, suit is filed with request to declare the plaintiffs as the owner of suit land and for perpetual injunction. It is contended that, defendants had encroached upon 05 R land of plaintiff and are in possession of excess area than the agricultural land as per their share. Thus, they have allegedly encroached upon the entire area of plaintiffs land. These allegations have found place in the plaintiff pleadings. Therefore, recovery of possession of 05 R land is sought for. Another prayer is for perpetual injunction to restrain the defendants from causing any type of obstruction to the possession of the plaintiffs over the suit land Gut no. 106 situated at Village Sonkhed.

06- Thus, plaintiffs have come with the case of encroachment on suit land. Defendants have denied this in their written-statement. However, they have contended in their separate written-statements that, plaintiffs have not got such plots measured through competent authority to show encroachment and they should have filed map with the plaintiff to show such encroachment since there is allegation of encroachment. In view of this, I hold that, measurement of suit land is necessary to ascertain the extent of alleged encroachment. Factum of encroachment may be orally deposed by the witness but extent of encroachment can be stated only by the measurer after measurement.

07- Prayer in this application is to appoint measurer to measure agricultural land Gut No. 106 to the extent of 50 R only. However, in view of the ruling in the matter of *Vijay Shravan Shende Vs. State of Maharashtra 2009(5) Mh.L.J.279*, joint measurement of the disputed property and the property belonging to the defendants who have allegedly made encroachment, is necessary to find out the encroachment if any in a suit for removal of encroachment. the defendants have also contended in their written-statements that, plaintiffs ought to have got the suit property measured through competent authority and since there is allegation of encroachment, I come to the conclusion that, joint measurement of suit land and land of other defendants in Gut no. 106 situated at village Sonkhed Tq. Purna, District Parbhani is necessary to ascertain encroachment if any. Therefore, I pass following order.

### **ORDER**

1. Deputy Superintendent of Land Record, Purna is appointed as Court commissioner.
2. Ld. Court Commissioner is directed to carry out joint measurement of Suit land of plaintiff and other defendants in Gut no. 106 situated at village Sonkhed Tq. Purna, District Parbhani and to submit report and map showing encroachment if any.
3. Plaintiffs to deposit fees as per rules in the said office.
4. Issue writ accordingly.

5. Application is accordingly disposed off.

(M.V. Poul)

Date :- 18.12.2024

Jt. Civil Judge, Junior Division,

Place :- Purna.

Purna.