



ORDER BELOW EXH. 42

1. This application is filed by defendant under order 26 rule 9 of CPC. I have perused the application, say at exh. 45 and written notes of arguments at exh. 48 filed by defendant. I have perused pleadings and documents filed on record. I have heard counsels of both the parties.
2. In this application the defendant is making prayer to appoint Commission i.e. office of Deputy Superintendent, Land Record, Purandhar for joint measurement of lands bearing gat no. 382 to 388 situated at village Tondal with further direction to fix boundary marks and to prepare map etc. Another prayer is also made in this application to make measurement of land gat no. 382 as per old survey no. 86/9 and to mention independent marks of length and width in the map etc.
3. After considering the pleadings and documents filed on record it appears that the defendant in the present application on page 8 pleaded that he has filed appeal in the office of District Superintendent, Land Record, which is pending. In the present application the defendant is giving history of consolidation scheme and various measurements previously done. The defendant is disputing the measurements. However, it is to be noted that the present suit is filed by plaintiff for removal of encroachment with perpetual injunction. The present suit is filed only for gat no. 383. If the copy of 7/12 extract of suit land bearing gat no. 383 dated 14/01/2023 is perused then prima facie it appears that this suit land is standing in the name of plaintiff. Copy of 7/12 extract of land gat no. 382 prima facie shows that it is standing in the name of defendants. Therefore, I am of the considered



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opinion that since this is suit for removal of encroachment and perpetual injunction for not disturbing possession, therefore, it is the liability of the plaintiff to stand on his own foot. The plaintiff is the master of his case. Therefore, it would not be in the fitness of the things to issue direction for measurement of lands other than suit land as prayed by the defendant in this application. At the most to elucidate the matter and considering reliefs claimed by plaintiff in the plaint, direction can be given to measure suit land bearing gat no. 383 only. The defendant is not at liberty to ask for in which manner the measurement should be done. Therefore, the present application deserves to be partly allowed. Hence, I pass following order -

ORDER

1. The application at exh. 42 is partly allowed.
2. The Deputy Superintendent, Land Record, Purandar is hereby appointed a Court Commissioner.
3. The Deputy Superintendent, Land Record, Purandar is directed to measure suit land gat no. 383 and to fix its boundaries and to prepare map accordingly.
4. The Deputy Superintendent, Land Record, Purandar if further directed to clearly show any encroachment in the suit land gat no. 383 if any in the map.
5. The Deputy Superintendent, Land Record, Purandar is directed to file its report till 17/04/2025 along with necessary papers.
6. Before doing work of measurement the Deputy Superintendent, Land Record, Purandar is directed to issue notices to concerned

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parties as per rules.

7. The defendant shall bear the expenses of such measurement.
8. Issue letter to the Deputy Superintendent, Land Record, Purandar accordingly.

Dt. 25/02/2025

(**Md. Taher Bilal**)
Civil Judge Junior Division, Saswad.