

CNR NO. MHPU18-002162-2016

ORDER BELOW EXH.27 IN R.C.S.No. 305/2016

- 1) Present application filed by the plaintiffs for appointment of Court Commissioner vide order XXVI rule 9 of Code of the Civil Procedure.
- 2) Plaintiffs contented that, defendants had encroached H 00.13 R on the suit property Gat No.571 situated at Patas, Tal Daund as per measurement register No. 1411/2013. Hence prayed for appointment of Court Commissioner for measurement of Gat No. 571 & 824 respectively.
- 3) Defendants filed their say and denied contentions of the plaintiffs. It is contended by them, plaintiffs are trying to collect evidence through Court machinery. The earlier measurement was done without giving notice to the present defendants and accordingly false map has created by measurement officer. Now by way of this application plaintiffs are trying to use that false map and trying to bring on record false report. If this application is allowed then there will be huge loss to the defendants. Hence, they prayed for rejection of the application.
- 4) Perused application and say. Heard counsel for both the sides. It is well established that under order 26 Rule 9 of the Code of Civil Procedure, the court has the discretion to order local investigation is not so much to collect evidence which can be taken in Court but to obtain evidence which from its peculiar nature can only be had on the spot. These cases of boundary dispute and disputes about the identity of lands are instances, when a court should order a local investigation under Order 26 Rule 9 of the Code of Civil Procedure. 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

the area encroached upon. Oral evidence can not conclusively prove such an issue. Considering facts and circumstances, if suit property and property of defendants is jointly measured, it would help to resolved their dispute. The submission of defendants that measurement officer has falsely created the map is not admissible. The proposed measurement will be conducted on the basis of maps of government record and not on the basis of map submitted by plaintiff created vide measurement dated 07.03.2013. The measurement on 07.03.2013 is in dispute and the proposed order to carry on measurement will not be based on that map. Hence, anxiety of the defendants that the measurement will be carried on with the help of map dated 07.03.2013 have no base. Hence, I don't feel any hindrance to allow this application. Plaintiffs are ready to bear expenditure of measurement of the suit property and property of defendants i.e. survey No. 571 and 824. In these circumstances, this application is deserves to be allowed.

5) Hence, in the light of above discussion I am passing following order.

Order

1. The application below Exh 27 is hereby allowed.
2. TILR, Daund is appointed as Court Commissioner, who shall measure the suit property i.e. Gat No.571 and property of defendants Gat No. 824 be measured preferably jointly by showing exact details of area encroached if any by either party & send measurement report within 3 months.
3. The plaintiffs shall deposit the necessary charges for the commission work within fifteen days from the date of this order in TILR office and it is directed to file xerox copy of challan on record.
4. Necessary writ be issued accordingly.
5. Plaintiff shall provide copies of the plaint, Written statement, application, say and necessary documents.

Date :27/02/2018

(**Shri. P. G. Lambe**)
3rd Jt. Civil Judge Jr. Division, Daund.