



Dipak Sitaram Dhamdhare

Vs.

Rajendra Baburao Dhamdhare

ORDER BELOW EXH. 26

Plaintiffs and defendants have made applications under Order XXVI Rule 9 of the Code of Civil Procedure, 1908 for the appointment of T. I. L. R., Ghodegaon, Tal. Ambegaon, Dist. Pune as a Court Commissioner.

2. Plaintiffs contended that they have instituted the suit for demarcation of boundaries. Defendants contended that they had filed the counter-claim for partition.

3. Plaintiffs submitted that plaintiffs are an owner and possessor of agricultural land bearing Block No. 102/2 admeasuring an area of 01 H 54 R situated at Village Pimpalgaon tarfe Ghoda, Tal. Ambegaon and Dist. Pune. Plaintiffs submitted that defendants have no concern with the suit property. However, defendants have the property Block No. 102/1 which is on the east side of the suit property. Defendants being an adjacent land-holder demolished the boundary mark and made encroachment over the suit property. Also they are disturbing peaceful possession of the plaintiffs over the suit property. Plaintiffs have requested defendants not to obstruct the possession of the plaintiffs over the suit property. However, defendants did not give heed to plaintiffs. Finally, they have submitted that, in above circumstances, it is necessary to measure suit land to ascertain the actual encroachment and for just decision of the case. Therefore, plaintiffs prayed to allow the application.

4. Per contra, defendants submitted that the Block No. 102 is not partitioned yet between plaintiffs and defendants. Though the Block No. 102 is subdivided into Block No. 102/1 and 102/2 and 7/12 extracts are prepared for

the same but property is not partitioned yet on record. Plaintiffs and defendants are using the property as per their convenience. The block numbers are not measured yet. The counterclaim of defendants for partition is pending in the court. Further he submitted that the plaintiffs have filed a present suit for demarcation of boundaries. If the said application is allowed then the subject matter of suit will fulfill and it will become like suit will decreed. Therefore, defendants prayed to reject the application.

5. Heard learned advocate for plaintiffs Shri. V. B. Pokharkar. He submitted as per his application. Also submitted that they are ready to bear the expenses of their measurement. He filed following citations in support of his contentions.

- 1) Malhar Vs. Shivaji (2013 CJ (Bom) 1754).
- 2) Shri. Bhupendra Turkana Vs. Shri. Homraj Meshram (2014 CJ (Bom) 394.
- 3) Pandit Landage Vs. Vishnu Pawar (Writ Petition No. 5158 of 2024 Bombay High Court)
- 4) Yashwant Bhaduji Ghuse Vs. Vithobaji Ladekar (2009 CJ (Bom) 1861)

6. Heard learned advocate for defendants Shri. H. B. Pokharkar. He submitted as per his application. He has given pursis at Exh. 29 and submitted that they are ready for the measurement of Block Nos.102/1 and 102/2 as whole. Also they are ready to bear the expenses of their measurement.

7. Perused the application, say and record.

8. After perusal of the 7/12 Extract of Block No. 102/1 and 102/2, it prima- facie appears that plaintiffs and defendants are owners of the respective suit property. The present suit has been instituted for demarcation of boundaries against the defendants.

9. The present application has been made by plaintiffs under Order XXVI Rule 9 of the Code which provides as follows:

9. Commissions to make local investigations. In any suit in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market-value of any property, or the amount of any mesne profits or damages or annual net profits, the Court may issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon to the Court: Provided that, where the State Government has made rules as to the persons to whom such commission shall be issued, the Court shall be bound by such rules.

10. Perused the citations filed by plaintiffs. The **Hon'ble Bombay High Court in the case of Yashwant Ghuse Vs. Vithobaji Ladekar (2009 CJ (Bom) 1861)** observed that,

"It is a settled position of law that under Order 26, Rule 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 Court, but to 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 Order 26,"

11. The **Hon'ble Bombay High Court in the case of Pandit Landage Vs. Vishnu Pawar (Writ Petition No. 5158 of 2024 Bombay High Court)** observed that,

"In the case at hand, the question of demarcation of the boundaries of the land and encroachment squarely arises for determination. Where the question is of removal of encroachment and demarcation of boundaries, it is necessary to have a joint measurement of the adjoining lands. A useful reference in this context can be made to

the decision of the Supreme Court in the case of Haryana Waqf Board V/s. Shanti Sarup and Ors....

.....The aforesaid being the position in law, I do not find any infirmity in the impugned order. The appointment of the cadastral surveyor to have a joint measurement of the suit land and the adjacent land of the Defendants would equip the Court to decide the lis in a just manner.”

12. The Hon'ble Bombay High Court (Aurangabad Bench) in the case of **Shri. Bhupendra Turkana Vs. Shri. Homraj Meshram (2014 CJ (Bom) 394** observed that,

“ Normally, it is true that the court of law would not exercise its discretion to assist the plaintiff to prove a fact as to who is in possession if it is a disputed fact. However, the cases of boundary dispute are clearly distinguishable in which the identity of land, measurement thereof and area of the land is needed to be considered preferably on the basis of the authentic evidence and map of the land drawn by competent public official on behalf of the Central or State Government, the trial court is benefited by such map of the land authentically drawn and produced in order to decide the suit correctly, effectively and finally in the larger interest of justice so that no such dispute shall remain pending in courts for long time in respect of alleged encroachments over the suit property. It is, therefore, always desirable to get the suit land or field measured by an expert or competent public official to find out the area of the suit land encroached upon, more so, when oral evidence cannot help the court when it is in the form of words against words by rival parties.”

13. The Hon'ble Bombay High Court in the case of **Malhar Vs. Shivaji (2013 CJ (Bom) 1754)** observed that,

“ It is a settled position of law that under Order 26, Rule 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 Court, but to 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 Order 26, Rule 9 of the Code. The disputes regarding the boundaries can be best adjudicated by taking the assistance of the experts such as the T.I.L.R., who on measurement can express his opinion.”

14. Therefore, in view of aforesaid legal position, it appears to be absolutely necessary that the Cadastral Surveyor ought to have been appointed when the question arises as to whether any encroachment has been made or not. The appointment of Cadastral Surveyor for taking joint measurement of the property owned by plaintiffs and the defendants for the purpose of local investigation under Order XXVI Rule 9 of the Code. Therefore, in order to ascertain the boundary marks of the property, measurement of land of plaintiffs and defendants is necessary.

15. Perused the record, plaintiffs filed the map of the suit property. On perusal of the map, it appears that the defendants are the adjacent land holders. Further, on perusal of the 7/12 extract of the suit property. It appears that plaintiffs are occupiers of the suit property.

16. The present suit is instituted for perpetual injunction. Considering the nature of the suit claim, the appointment of a Court Commissioner will help the court in determining the actual area of encroachment and it will help for just and proper decision of the case. Moreover, in a suit relating to boundary dispute, an expert should be appointed to determine whether there has been an encroachment or not, it is always desirable to get the property measured by an expert and find out the factual position.

17. Therefore, considering the nature of the suit, the application deserves to be allowed. Hence, the following order is passed.

ORDER

1. The application at Exh. 15 & 17 are allowed.
2. T.I.L.R, Ghodegoan, Tal. Ambegaon, Dist. Pune is appointed as Court Commissioner.
3. T.I.L.R, Ghodegoan, Tal. Ambegaon, Dist. Pune is directed to carry out measurement of the entire land bearing Block No. 102 situated at Pimpalgaon tarfe Ghode Village, Tal. Ambegaon and Dist. Pune and to inspect the factual situation, encroachment, if any.
4. T.I.L.R. Tal. Ambegaon, Dist. Pune shall follow due procedure of law and submit report along with the map on or before 26/09/2025.
5. Plaintiffs are directed to pay the necessary fees for measurement of their land and provide the necessary documents to the concerned office and file his affidavit in compliance of the present order in the suit.
6. Defendants are directed to pay the necessary fees for measurement of their land and provide the necessary documents to the concerned office and file his affidavit in compliance of the present order in the suit.

7. Issue a commission writ to the Court Commissioner along with a photocopy of the application on payment of fees by plaintiffs in the T.I.L.R., Ghodegaon, Tal. Ambegaon, Dist. Pune.

Date : 05/07/2025
Place : Ghodegaon

Sd/-
(Sneha Sunil Pulujkar)
2nd Joint Civil Judge Junior Division,
Ghodegaon, Dist. Pune.

CERTIFICATE

I affirm that the contents of this P.D.F. file are the same word for word as per the original order .

Name of the Court : Smt. Sneha Sunil Pulujkar,
2nd Jt. C.J.J.D. and J.M.F.C.,
Ghodegaon, Dist. Pune.

Name of the Steno : J. S. Kaite, Steno Grade - III.

Order date : 05/07/2025.

Order signed by P.O. on : 05/07/2025.

Order uploaded on : 05/07/2025.