


MHPU240014652022 	<u>RCS No.206/2022</u> Ravannath Take Vs. Shivaji Gorade & Ors.
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ORDER BELOW EXH.30

This is an application filed by plaintiff for appointment of Commissioner to carry out the measurement of suit property.

02. Plaintiff has contended that plaintiff has filed this suit for declaration and permanent injunction. Defendants have filed their written statement and contested the suit. Defendants have raised dispute regarding boundary of suit property. Therefore, it is necessary to appoint T.I.L.R. Ghodegaon for measurement of suit property. Plaintiff is ready to take necessary fee for the measurement. Therefore, application be allowed for appointment of T.I.L.R. Ghodegaon for measurement of suit property. Hence, he prayed to allowed the application.

03. Defendant no.1 has filed his Exh.32 and submitted that application of plaintiff is false. Boundaries of suit property and property of defendant no.1 are not fixed. Therefore, plaintiff can not say that defendant no.1 has make encroachment in the suit property. Plaintiff is trying to collect evidence by filing present application. Plaintiff is having option to measure the suit property from office of Land Records. Defendant no.1 is not having objection for measurement of suit property but, it is necessary to measure Gat No.1629 and Gat No.1630

along with suit property. Defendant no.1 is ready to pay necessary fees for measurement of property. Hence, he prayed for joint measurement of property. Defendant no.2, 3 and 4 filed their say vide Exh.34 and opposed the application. Plaintiff has filed this application only to prolong the matter. Plaintiff has not added adjacent land owners as a party in the suit. Defendants have not made any encroachment in the suit property. Also, plaintiff has not any evidence regarding such encroachment. Plaintiff has not measured his land before filing suit. Now, plaintiff is trying to collect evidence with the help of Court. Therefore, it is necessary to reject the application with cost.

04. Heard both sides. Perused application, say and record. It appears from perusal of record that plaintiff has filed suit for fixation of boundaries and permanent injunction. The contention of the plaintiff is that the defendants are raising dispute regarding the south side bund of suit property. They are not ready to measure lands. They are trying to encroach upon suit property. Defendant no.1 has given no objection to measure suit property. But, he is praying for measurements of Gat no.1629 and 1630 alongwith suit property. Defendant no.2 to 4 have contended that plaintiff is trying to collect the evidence with help of Court. Plaintiff has not measure his land before filing suit. On perusal of contention of both parties, there is boundary dispute between plaintiff and defendants.

05. As per settled law, whenever dispute is about encroachment and boundary, the Court must appoint Commissioner to take a joint measurement. In view of the above discussion, I find no impediment to allow this application for appointment of T.I.L.R., Ambegaon as a Court

Commissioner for joint measurement of suit property Gat no.1628, 1629 and 1665. Therefore, application of plaintiff is liable to be allowed. Hence, I proceed to pass following order :

ORDER

1. Application Exh.30 is allowed.
2. The T.I.L.R., Ambegaon is hereby appointed as Court Commission and is directed to carry out joint measurement of suit property bearing Gat No.1628, 1666 and Gat no.1665 and 1629 situated at village Shingave Pargaon, Tal. Ambegaon, Dist. Pune. The Court Commission shall prepare a detail map of joint measurement and file his report within period of one month from receiving of this order.
3. Plaintiff and defendant no.1 shall directly deposit the necessary fees for measurement with the concerned office as per rule.
4. The T.I.L.R., Ambegaon is directed to file a report within one month from receiving of this order without fail.
5. Parties to take note.

Sd/-XXX

(Smt. M. S. Mali)

Jt. Civil Judge Junior Division
Ghodegaon, Dist. Pune.

Place : Ghodegaon
Date : 30/08/2024