

R.C.S. NO.41/2015
CNR NO.MHRG090004432015
Ramesh Patil vs Narayan Bhave

ORDER BELOW EXH.46
(Passed on 02.09.2023)

This is an application, filed by plaintiff under Order XXVI Rule 9 of the Code of Civil Procedure, for appointment of Taluka Inspector Land Record (in short "T.I.L.R.") as Court Commissioner.

02. The description of the suit property is

At Bahe Gat no.97 area 0.69.0 having boundaries

East: Gat No.100 and Gat No.101 (Defendant No.2 suit property)

West: Gat No.96 (Defendant no.1 suit property)

South: Gat NO.98

North: River

03. Plaintiff submitted that, the suit property is owned by the plaintiff by way of sale deed bearing registration no.2564 /2010 there is mutation entry to that effect bearing no.271.Further it is the contention of the plaintiff that, he is working at Mumbai therefore it is not possible for him take care of his suit property on day to day basis. The defendant taking the advantage of that the plaintiff is not there defendant started encroachment in the suit property of the plaintiff on the eastern side of the suit property.

04. Defendant filed reply at Exh.48 on the said application and submitted that, the plaintiff has not filed on record the measurement of the encroached portion of the suit property. The plaintiff is tried to collect the evidence therefore, the application may be rejected.

05. Plaintiff filed the present suit for the Removal of encroachment and injunction. It is the contention of the plaintiff that, The suit property at Bahe having Gat no.97 area admeasuring 0.69.0 is his self acquired property and he is in possession of the same. The defendant encroached tin the suit premises of the plaintiff. As per Order XXVI Rule 9 the court commissioner can be appointed where there is a boundary dispute and to find out the encroached portion of the land and court commissioner cannot be appointed for collection of evidence. In the present suit the plaintiff is contended that, the encroachment is made by the defendant therefore, spot survey is necessary to find out the exact situation of the suit property. The defendant has opportunity to cross examine the plaintiff and the expert witness on the point of encroachment portion if any. Hence I pass following order:

ORDER

- 1.Application is allowed.
2. Taluka Inspector of Land Record, Roha appointed as Court Commissioner.
3. Ld. Court Commissioner is directed to carry out measurement of suit property at Bahe, Tal.Roha bearing ,Gat no.97 area 0.69.0 Rs.2.44 ps. having boundaries of the suit property On Eastern Side : Gat No.100 and Gat No.101 On Western Side: Gat No.96 On Southern Side: Gat No.98, On Northern Side: River and to submit report and map showing encroachment if any.
4. Plaintiff to deposit fees as per rules in the said office.
5. Issue writ accordingly

Place: Roha

Date: 2/09/2023

Sd/-
(Megha C.Hasge)
Jt.Civil Judge Junior Division
Roha Dist. Raigad