

**Chandrakant Gole Vs.
Jainab Siddhiqui & Ors.,**

ORDER BELOW EXHIBIT 73 IN RCS NO. 90/2015
(Decided On 14/09/2017)

The plaintiff presented this application for appointment of court Commissioner under Order 26 Rule 9 of Code of Civil Procedure. Perused the application, say and other proceedings of the matter. Heard both the parties.

02. The plaintiff submitted that the suit property Survey No. 198/2B and the property of the defendant Nos. 2 and 3 Survey No. 198/2A are adjacent to each other. In order to determine the real dispute it is necessary to fix the boundaries of both the properties. Therefore, he prayed for appointment of court commissioner to measure and fix the boundaries of both the properties.

03. The defendant Nos. 2 and 3 resisted the application and filed their say vide Exh. 75. The defendant No.1 adopted the say of the defendant Nos.2 and 3 vide Exh. 77. They contended that the plaintiff has already measured the suit property and the property of the defendant Nos. 2 and 3 Survey No. 198/2A and fixed the boundaries of the same previously. The plaintiff had filed an appeal to the DILR against the measurement of the both the properties by the TILR. That appeal was disposed off. They further contended that the plaintiff is trying to collect the evidence by making this application. Merely because the appointment would not cause loss to the defendants cannot be considered as a ground to allow this application. The dispute between both the parties cannot be solved merely by appointing the court commissioner.

Properties of both the parties have already been measured by the TILR. Therefore, the plaintiff cannot ask for appointment of court commissioner again. Considering this facts, the defendants prayed for rejection of the application.

4. The present suit is for permanent injunction against the defendants restraining them from interfering in possession of the plaintiff. It is admitted fact that the Survey No. 198 was divided into Survey No. 198/1A and Survey No. 198/1B. According to the plaintiff those Survey No.198 was not divided according to the possession of the parties. According to him the defendants have started creating a third party interest in the suit property. The defendants have denied the claim of the plaintiffs and contended that they never interfered in the possession of the plaintiff. According to the defendants their property Survey No.198/2A and the suit property have already been measured but they have failed to produce any material on record to buttress their claim.

5. The plaintiff claims that there is a dispute of boundaries regarding the suit property and the property of the defendants. On the other hand the defendant claims that there is no boundary dispute between both the properties. Considering these rival pleadings of both the parties it is clear that the suit property and property of the defendants should be measured and it is necessary to fix their permanent boundaries. Further in order to adjudicate the dispute between both the parties and in order to come to proper conclusion about the status of both the properties the application deserves to be allowed. No loss would be caused to the defendants if the application is allowed.

Therefore, I proceed to pass following order,

-:: ORDER ::-

Application is allowed.

The TILR Mangaon is appointed as the Court Commissioner.

He is directed to measure the Survey No. 198 Hissa No. 2/A and the Survey No. 198 Hissa No. 2/B and fix the boundaries of the same.

He is directed to submit the court accordingly in this court within two months from the date of this order.

He is directed to carry out the measurement in light of the application, say, plaint and written statement.

The plaintiff is directed to bear the expenses of the court commission and he is directed to deposit the court commission fee in the TILR office.

Issue writ accordingly.

Mangaon.

(G.S. Hange)

Date:- 14/09/2017

Jt. Civil Judge J.D. Mangaon.

Modified order below Exh. 90

T.I.L.R. Mangaon is directed to take into consideration the previous report of measurement of Survey No. 198 Hissa No. 2A and Survey No. 198 Hissa No. 2B carried out on 6/11/1996 and relevant documents of the same. (as per order below Exh. 90)

Mangaon.

(G.S. Hange)

Date:- 16/09/2017

Jt. Civil Judge J.D. Mangaon.

