

REGULAR CIVIL SUIT NO.158/2023

OLD REGULAR CIVIL SUIT NO.155/2021

(CNR No. MHRT14-000315-2023)

(Dahoud Husen Mukadam Vs Sandip Bhiku Vakhe etc)

ORDER BELOW EXH.46

DATE : 16/10/2023.

The defendants prayed to appoint a Court-commissioner *vide* under Rule 9 of Order XXVI of the Code of Civil Procedure, 1908. Read the application and say. Heard learned advocates of both sides.

2. The defendant contended that they had filed Misc. Appeal before the Hon'ble District Court, Khed. The said appeal was decided on 16.08.2023. While deciding appeal, Hon'ble District Court gave a direction to appoint a Court-commissioner. As per the order of the Court they prayed to appoint TILR Mandangad as a Court-commissioner.

3. The plaintiff filed say. The plaintiff gave no objection to allow the application, however, he prayed to gave direction to Court-commissioner to filed report along with map of construction of the defendants.

4. The Learned advocate for the defendants argued that, the map of construction of defendant is not necessary for the adjudication of dispute between the plaintiff and them. On the contrary, the Learned Advocate for the plaintiff argued that the suit is instituted for perpetual injunction and the defendants are trying to encroach on the suit property. Therefore, the map of construction is necessary.

5. perused the case and the record. It appears that, the suit is instituted for relief of perpetual injunction. It is the case of plaintiff that, he and some other co-owners are in possession of the suit property. The defendants are not concerned with the suit property. However, the defendant is trying to encroach and construct building on the suit property. On the other side, defendants contended that, they did not encroached on the suit property. They are constructing building on their own land. The said dispute shows that, there is boundary dispute of plaintiff and defendants property.

6. Furthermore, the defendants have produced copy of the judgment passed by Honb'le District Court, Khed. I perused it. In that Judgment, the Hon'ble Court has given direction to appoint Court-commissioner from the office of land record from the concerned Taluka.

7. Considering the nature of dispute, the measurement of the suit property and measurement of the construction of the defendant is necessary to adjudicate real dispute between the parties. I found force in the argument of the Learned Advocate for plaintiff. Hence, it is necessary to give direction regarding measurement of construction and prepare map of it. The Court commission is going to appoint on prayer of the defendants. Therefore, they expenditure and fee of the Court Commission shall be paid by the defendants. It will be proper to appoint T.I.L.R. Officer of Mandangad as the court commissioner. Hence, I pass the following order.

ORDER

1. The application is allowed.
2. T.I.L.R. Mandangad is hereby appointed as court commissioner.
3. He shall after following due procedure for measurement, shall measure the suit property i.e. Survey No.47/5 and property of defendants i.e. Survey No.47/2/A-1 and prepare a detail map depicting portion of land in possession of the

plaintiff and the defendants, if any encroachment made by the defendants through construction on Survey No.47/5.

4. He shall prepare or show on map about construction, type of construction and area of construction of the defendants.
5. The cost of commission process fee shall be borne by the defendants and accordingly they shall deposit the commission fees as per rule and procedure in TILR office.
6. Issue commission writ accordingly.

(M. A. Shinde)

Place: Ratnagiri

Date: 16.10.2023

Civil Judge, Jr. Division
**Mandangad, Taluka
Mandangad District Ratnagiri.**

I affirm that the contents of this Pdf file judgment/order are same words as per original judgment/order.

Court Name	:-	Civil Judge, J.D. & J.M.F.C., Mandangad, Taluka Mandangad, District- Ratnagiri.
Name of Stenographer	:-	Shri. D. R. Joshi
Date of Decision	:-	16/10/2023
Signed by P.O. on	:-	16/10/2023
Uploaded on	:-	17/10/2023