

ORDER BELOW EXH.111

1. The brief facts leading to filing this application, are as under-

The plaintiffs filed present suit alleging that the defendants owns a property bearing Survey No. 84/3, adjoining to their land bearing Survey No. 84/4. The demarcation of boundaries between these properties took place vide survey, dated 11/04/1989 and since then those parts were separated by trees till 13/12/2010. Defendants removed those trees indicating boundary marks, encroached upon plaintiffs' property bearing Survey No. 84/4 and also erected fencing. They damaged the trees and crop standing there. They encroached within the area of plaintiffs' property up to 14 meters and are intending to grab it. Since then various proceedings took place before revenue authorities, but no purpose served and hence present suit. Plaintiffs also annexed map with the plaint prepared by private surveyor.

2. The defendants however refuted allegations and denied the suit. The plaintiffs filed application, Exh.24, and court commissioner was appointed to verify, whether there exists any encroachment or not? Accordingly, court commissioner filed his report, Exh.52, along with map.

3. The plaintiffs then called upon the said surveyor and examined him vide Exh.110. In this evidence the plaintiffs brought on record certain important deficiencies in the measurement map. *First*, the measurement is not carried out as per the measurement of the area shown in the original survey map. The concerned surveyor carried out measurement on the basis of boundary marks shown by the parties. *Second*, the directions are also wrongly quoted. *Third* and last major deficiency is the map is also not tallying with previous measurement carried out in the year 1989, on which suit is based. All these deficiencies collectively indicate that no purpose

will be served by relying on this evidence for the adjudication of disputed facts in issue.

4. After examining this witness therefore plaintiffs filed the present application stating that in view of these deficiencies the fresh measurement may be ordered by appointing fresh commissioner. Other side objected to it mainly stating that the application is vague, the measurement is legal, correct and proper, the plaintiffs are killing time and prolonging the matter, hence application shall be rejected.

5. As stated above, from the evidence of commissioner it is clear that this evidence served no purpose for which the commissioner was appointed. The map is apparently incorrect as the procedure followed itself was incorrect. It can be inferred that there is need of fresh measurement for adjudication of controversy.

6. But, there is another fact noticed by this court which, unfortunately none of the parties brought to the notice, the map showing the correct status or situation of the properties is already on record. The said map is annexed with Exh.1 and plaintiffs are already relying on it and filed the suit on its basis. It is not necessary that measurement should be only through government machinery and only evidence of government witness can be accepted for proving encroachment. Despite that without drawing attention of the court the fresh commissioner was appointed who filed incorrect map prepared without following proper procedure and consumed substantial time for no purpose.

7. The suit is of 2011. The commissioner was appointed in the same year on 23/02/2011 and still up to year 2019, the matter is revolving only around the report. The record shows that already previously three measurements carried out, further measurement may create further chaos

and confusion at the peril of the interest of the plaintiffs. The purpose of plaintiffs will definitely serve by examining the witness who prepared plaintiff map.

8. As stated above, as already the map relied by the plaintiffs and prepared on their request is already on record as plaintiff map, it is necessary to examine him and serve the purpose of the suit. There is no need of fresh commission for further measurement. If any other situation arrived, the application filed by the plaintiffs can be considered at later point of time. But, at this juncture it is not desirable to do so. Considering all these facts and circumstances, following order -

ORDER

- A. The application is rejected at this stage.
- B. The liberty is granted to plaintiffs to examine Chadrakant D. Bhagat, retired surveyor, as their witness, if they are willing to do so. They are directed to take steps for his examination as witness on or before next fixed date.
- C. It is clarified that if any such thing noticed at later stage of the matter that plaintiffs are deprived of examining this witness for any reason beyond their control, they are at liberty to file fresh application for measurement as the measurement done by court commissioner is not as per settled norms and practice and as such it is incorrect.

Sd/-

KUDAL

(KOMALSING RAJPUT)

DATE – 18 /12 /2018

C.J.J.D., KUDAL, DIST. SINDHUDURG