



ORDER BELOW EXH.27 IN R.C.S.NO.85/2022

1. This is an application filed by the plaintiff for appointment of the Taluka Inspector of Land Records, Kudal (for short the 'T.I.L.R.') as a Court Commissioner for measurement of suit land in order to ascertaining encroachment made by the defendant upon the suit land i.e., Survey no. 325 A 1, Hissa No.16 as well as whether the defendant is carrying out construction in the suit land or not.

2. Read the application and say at Exh.28. Heard both sides. Perused record.

3. According to plaintiff, the defendant has encroached upon and started construction in the suit property hence, he has filed suit for perpetual injunction for restraining defendant from carrying out construction in encroached portion of suit property. The plaintiff further contended that, defendant has encroached upon and started construction approximately up to 15 feet in the suit property. On other hand defendant in his say contended that, he has started construction in joint property Survey no. 325 A 1, Hissa No.05 and not in the suit property ie., Survey no. 325 A 1, Hissa No.16.

4. In order to decide the dispute between the parties as to alleged encroachment made by the defendant in the suit property. On this grounds, the plaintiff has prayed for appointment of the T.I.L.R. Kudal as a Court Commissioner for carrying out measurement of the suit

land in order to ascertain encroachment made by the defendant upon suit land.

5. The defendant has filed his say and supported the said application. The defendant contended that, he has started construction in joint property i.e., Survey no. 325 A 1, Hissa No.05 and not in the suit property ie., Survey no. 325 A 1, Hissa No.16. According to him, appointment of Court Commissioner is necessary in order to bringing on record the factual position mentioned in his application by the plaintiff. He further contended that, he has no objection for appointment of Court Commissioner but he prayed that expenses to be borne by the plaintiff.

6. Heard both sides. Perused documents on record.

7. Here, useful reference can be made to a decision of our Hon'ble High Court, Bench at Nagpur in the case of **Shri. Bhupendra Bhagwat Turkar Vs. Shri. Homraj Zituji Meshram, reported in 2014 (3) All MR 635**, wherein it has observed thus;

“Normally, it is true that, the Court of law would not exercise its discretion for to assist the plaintiff to prove fact as to prove who is in possession if it is a disputed fact. However, the cases of boundary dispute are clearly distinguishable in which the identity of land, measurement thereof and area of the land is needed to be considered preferably on the basis of the authentic evidence and map of the land drawn by competent public official on behalf of the Central or State Government, the trial Court is benefited by such map of the land authentically drawn and produced in order to decide the suit correctly, effectively and finally in the larger interest of justice so that no such dispute shall remain pending in Courts for long time in respect of alleged encroachments over the suit property. It is, therefore, always desirable to get the suit land or field measured by an expert of competent public official to find out the area of the suit land

encroached upon, more so, when oral evidence cannot help the Court when it is in the form of words against words by rival parties. Considering the implication of section 83 of the Indian Evidence Act, presumption can be drawn in respect of map or plan drawn by competent public official in such cases so as to resolve the controversy between the parties.

It is, therefore, decided by this Court earlier also, that it is always desirable to insist upon the parties in such cases, to have a joint measurement in respect of the suit land or joint property then the trial Court upon evidence led before it can decide the real controversy in the suit finally, effectively and in accordance with law. In cases where parties are at dispute or not in agreement with the map or plan. Court Commissioner can certainly be appointed in order to prepare a map or plan in respect of the suit property in order to assist the Court. There is no question of assisting the plaintiff to collect evidence of disputed factum of possession in such cases.

8. In view of the above quoted observations, and the case in hand the suit for permanent injunction has to be decided. In the course of deciding said application, it has transpired that, defendant has alleged to be encroached upon and started construction approximately up to 15 feet in the suit property. On other hand defendant in his say submitted that, he has started construction in Survey no. 325 A 1, Hissa No.05 and not in the suit property ie., Survey no. 325 A 1, Hissa No.16.

9. In the aforesaid background, the **factual position** at the site (spot) is required to be brought on record in order to **elucidate** the matters in dispute. I am of the view that, appointment of Court Commissioner would assist the Court in resolving the dispute between the parties **correctly, effectively and finally**. Thus, the application deserves to be allowed. As regard to whether the defendant is carrying

out construction in the suit land or not, no such directions can be given, as Court Commissioner cannot be appointed to find out that defendant is carrying out construction in the suit land or not. What can be done, is that, the Court Commissioner can be directed to carry out measurement of entire suit property i.e. Survey no. 325 A 1, Hissa No.16, in order to ascertain and report encroachment made by the defendant in the suit property if any and for bringing on record the factual position at the site. Hence, Order.

ORDER

1.	Application Exh.27 is allowed in the following terms.
2.	The Taluka Inspector of Land Records, Kudal is appointed as a Court Commissioner. He is directed to carry out measurement of suit property i.e. Survey no. 325 A 1, Hissa No.16 of Nagar panchayat Kudal, Tal. Kudal Dist. Sindhudurg.
3.	The Court Commissioner shall show prominent things viz. internal bands, trees, structures, roads, if any, noticed by him at the time of carrying out actual commission work. If any encroachment is noticed by him, he shall mention exact area of such encroachment separately. He shall prepare a map accordingly.
4.	The Court Commissioner shall issue notices to the parties before carrying out actual commission work.
5.	The Court Commissioner shall submit his report, in any case, within one month from the date of receipt of commission writ.

6.	Plaintiff shall pay the requisite commission fee directly in the office of the T.I.L.R., Kudal.
7.	Issue commission writ accordingly.

Date : 26/09/2022

(P. R. Dhore)
Jt.Civil Judge, (J.D.), Kudal.