

ORDER BELOW EXH. 28

1. Perused record. Heard advocates for both the sides.
2. As per plaintiff she is owner of the suit property and in cultivating possession of it. Defendants are not in anyway concerned with it. From the contents of written statement it is clear that defendants raised boundary dispute. The defendants cut the trees standing on the suit land, the report in that regard also necessary. Therefore, the commissioner shall be appointed for fixation of boundaries and report on cutting of trees.
3. The defendants however denied the contents stating that they had not raised any boundary dispute. The application is filed just to collect the evidence. In addition to this main objection, defendants also specifically objected to the granting of prayer stating that the suit property is not divided and no separate map of each share prepared with the department of Land Records. The suit land is *Akaripad* land, no separate shares were shown to be prepared in the said record from Survey No. 36/4C, as claimed by plaintiff. The record maintained by Department of Land Records, prevail over the Revenue Record. Therefore, application shall be rejected.
4. If we perused plaint and written statement, defendants not raised any boundary dispute. Rather they disputed the very claim of plaintiff and pleaded that there is no such property Survey No. 36/4/C/2, in existence which is derived from original Survey No. 36/4C. From the record it is also clear that the plaintiff is relying of Revenue Record. No map showing separate shares is prepared with Department of Land Record in respect of suit property. Thus, there is no admitted map on record. Therefore, allowing the measurement of suit property is not warranted as there is no boundary dispute. If we perused contents of the application

and prayer sought there it is also clear that some how plaintiff wants to bring on record the actual situation at the suit property. In absence of any necessity of measurement allowing such application for collection of facts in existence at the suit property will also amount to collection of evidence. In addition to it, there is no admitted map on record, the measurement of a share claimed by plaintiff is difficult and nothing but futile exercise creating more confusion in the matter.

5. Thus, there is no need of measurement as there exists no boundary dispute, the allowing of the application will amount to collection of evidence and for want of admitted map on the basis of which measurement can be done, application needs to be rejected, hence following order -

ORDER

Application is rejected. No order as to costs.

Sd/-

KUDAL

(KOMALSING RAJPUT)

DATE – 05 /01 /2017

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