

**CNR NO. MHSI70004102011****Order passed below Exh. No.89
(I.A.No. 1/2019) in R.C.S. No.107/2011**

This is an application preferred by the plaintiff under order 18 Rule 3-A of the Code of Civil Procedure (hereinafter in short referred 'C.P.C.').

2. The plaintiff has contended that the plaintiff has filed the present suit for removal of encroachment and restoration of possession. The plaintiff has filed the application for temporary injunction against the defendant. The said application was allowed. Despite of that the defendant has carried out illegal construction. Therefore, the plaintiff has preferred an application at Exh.59 for appointment of Court Commissioner. The Deputy Superintendent of Land Record, Malvan has not carried out construction as per the original gat book and filed measurement map at Exh.61. The Deputy Superintendent of Land Record, Malvan has carried out commission work only to help the defendant. Thereafter, plaintiff has called nimtana mojani from the office of the Deputy Superintendent of Land Record, Malvan. Accordingly, nimatana mojani alongwith report at Exh.80 was filed before the court without verifying boundaries of the property. The original gat book and maps drawn by the Court Commissioner are not tally with each other. Therefore, in order to bring on record the factual position before the court, the examination of the measurer who has prepared measurement map at Exh.61 and report at Exh.80 are necessary. If the said

witnesses are examined initially, the plaintiff would show how wrong measurements were carried out. Therefore, it is prayed that to issue witness summons to the measurer namely V.G. Gavande, D.B. Kale and Deputy Superintendent of Land Record namely Anuradha Agam for recording their evidence as per Order 18 Rule 3-A of the C.P.C.

3. The defendant has resisted the application by filing say on overleaf of the application. It is contended that the plaintiff cannot examine his witness before his examination. The plaintiff could examine these witnesses after his evidence. The application filed by the plaintiff is not legal. Therefore, prayed to reject the application.

4. Heard learned advocate Shri.B.M.Dalvi for the plaintiff and learned advocate Shri.H.L.Govekar for the defendant. Both parties have reiterated the contents of the application and say. Order 18 rule 3-A of the C.P.C. lays down normal rule of examination that a party must examine himself before he examines his witnesses. The party may deviate from the rule with permission of the court obtained at the stage of commencing his evidence or even at a later stage on assigning sufficient cause. In the instant case, the plaintiff has disputed the measurement map at Exh.61 and report at Exh.80.

5. The plaintiff has contended that the Court Commissioner has not carried out measurements properly. In order to bring on record the aforesaid fact, the examination of the Court Commissioner/ measurer is necessary. If the Court

Commissioner/ measurer is examined before the recording of evidence of the plaintiff, it will come on record that the Court Commissioner/ measurer has carried out or not commission work properly. After examination, if it is found that the Court Commissioner/measurer has not carried out measurement properly, the Court Commissioner/ measurer can be directed under Order 26 Rule 10(3) of the C.P.C. to conduct further inquiry. Therefore, I am of considered opinion that examination of Court Commissioner/measurer is necessary prior to recording of evidence of the plaintiff. Therefore, in the interest of justice and for arriving at just decision of the case, it would be just and proper to grant permission to the plaintiff to record evidence of the Court Commissioner/ measurer before his evidence. Accordingly, I pass following order.

ORDER

1. The application at **Exh.89** is hereby allowed.
2. Issue witness summons to the Court Commissioner/ measurer V.G. Gavande, D.B. Kale and Deputy Superintendent of Land Record namely Anuradha Agam after payment of necessary witness bhatta and traveling charges.
3. Inform the concern accordingly.

(Pronounced and dictated in open Court.)

Place : Malvan
Date : 24/07/2023

Mahesh R. Devkate
Jt. Civil Judge Jr.Dn., Malvan.