

Order passed below Exh. 128 in R.C.S. No. 391/1993**(Vasant Chavan V/s. Bajarang Shelake)****CNR : MHSN05-000023-1993**

Plaintiffs have filed the present application for measurement of the suit land by higher authority. They submitted that, the concerned Office of Deputy Superintendent of Land Records Islampur has not carried out the measurement as per the order and the said map is not acceptable. They have vaguely stated that the area in *Post-Hissa* record, *Gunakar* book and 7x12 extract are different and hence the work as such could not be completed. There was a Measurement No. 225/99 with a different report by the same Office. So it appears that the said Office is making out suspicious reasons and hence this application for measurement by higher authority.

2. Defendants filed say and objected the application. They stated that the measurement has been done as per *Gunakar* book and there cannot be any difference. There is major difference in the area as per 7x12 extract and *Phalani* record. The earlier measurement was faulty and hence there is no need for further measurement. Hence this application be rejected.

3. Heard both the Ld. advocates at length.

4. Record goes to show that earlier original plaintiff had filed application (Exh. 18) for appointment of Court Commissioner and for ascertainment of the encroached area. That application was allowed on 13.10.1997 and the then Office of Taluka Inspector of Land Records Walwa was appointed as Commissioner. There is a report of the said Office produced in this matter. Thereafter concerned Court

took evidence and decreed the present suit on 06.03.2007. Being aggrieved by the said Judgment and Decree, the defendants preferred Regular Civil Appeal No. 33/2007 before Hon'ble District Court Islampur. That appeal was allowed on 26.04.2017.

5. Hon'ble District Court remanded the matter back to this Court with direction to appoint Cadestral Surveyor to measure Survey No. 662 as per *Gunakar* book at Exh. 22 and *Phalani* map at Exh. 66. Hon'ble Court further directed to give necessary opportunity to both parties to lead their fresh evidence. Thereafter, the plaintiffs filed application Exh. 84 to appoint Court Commissioner as per the order of Hon'ble District Court. My Ld. Predecessor allowed the said application on 12.12.2017 and appointed a Cadestral Surveyor with the Office of Deputy Superintendent of Land Records to carry out measurement as per the directions of Hon'ble District Court. Commission letter was issued and this Court has to wait till 11.10.2019 for a report from the said Office. That report is filed at Exh. 121. The Concerned Office informed that there is difference in 7x12 extract, *Gunakar* book, *Aakara* Code statement and *Phalani* record and the matter was remitted back to this Court.

6. Now the plaintiff waited and again objected this report by filing say at Exh. 130. He also filed this application on 05.02.2020 for measurement from higher authority. Ld. advocate for the plaintiff submitted that, there was a measurement in the year 1999, which showed encroachment in the area of plaintiff. He questioned the said authority for filing such report without any encroachment in year 2019. Ld. advocate for the defendants, however, submitted that there is great difference in the area in various records and hence the

encroachment which is not in existence could not be shown.

7. As the report at Exh. 121 was not giving any details, this Court issued a notice to concerned Surveyor Shri. Amitkumar Nathu Bande to explain the circumstances. The Surveyor appeared before this Court and gave a detail explanation at Exh. 136. He informed that there are *Pot-Hissa* No. 1A, 1B, 2A and 2B in Survey No. 662 as per the *Phalani* record with their Office. So also there are *Pot-Hissa* Nos. 1 to 8 in the said Survey No. 662 as per *Gunakar* book available with the Office. He further informed that there are *Pot-Hissa* No. 2A, 2B/1, 2B/2, 2B/2/1A/2m 2V/2/1A/1B, 2B/2/2 as per the 7x12 extracts. He has made such mention in the map with the report and submitted that, Talathi has made various 7x12 extracts, but authentic *Pot-Hissa* records were not prepared. So *Pot-Hissa* map of such *Pot-Hissa* are not with the said Office, which has created a problem about the method of measurement. This explanation has been filed on record on 11.01.2021. However, Ld. advocate for the plaintiff did not explained these anomalies.

8. While considering this application this Court has to see whether there has been a true compliance of the order of Hon'ble District Court and the order below Exh. 84. Reference has been given to Exh. 22 and Exh. 66. It has been specifically directed that the Commissioner has to carry out measurement after considering these two documents. The original letter of commission (Exh. 109) is filed with Exh. 121. It appears that the concerned clerk did not give these two important documents for perusal and information of the concerned Court Commissioner. This is a major lacuna in the said commission letter and subsequent work of commission. This fact has

not been cited either by the plaintiffs or by the defendants. The convenient silence of the plaintiffs speaks in volumes. There is already much delay in the present proceeding and such mistake will nevertheless prolong it. However, this Court cannot ignore the mistake which amounts to not following the directions in the order.

9. So having considered all these aspects, I do find that the concerned Office of Deputy Superintendent of Land Records Islampur has to measure the said whole Survey No. 662 as per the direction below Exh. 84 and that of Hon'ble District Court. The matter has to be sent back for reconsideration. However, now the concerned Office and the parties cannot be given much space and the whole practice has to be completed within stipulated period. Hence the order follows,

ORDER

1. The commission report (Exh. 121) along with whole documents be sent back to the Office of Deputy Superintendent of Land Records, Walwa-Islampur with a fresh letter of commission.
2. The concerned clerk shall invariably attach the copies of Exh. 22 and 66 and of this order with the said commission letter for perusal of the said Surveyor.
3. The Cadastral Surveyor shall refer these two documents for the necessary commission work as per the order below Exh. 84.
4. The plaintiffs shall deposit the necessary fees with the said Office till 15.02.2021 and shall inform this Court on 16.02.2021.
5. Both the parties shall assist the Commissioner.
6. The Commissioner shall carry out the commission work after issuing notices to both the parties and the report along with map shall be submitted on or before

31.03.2021.

7. Any failure in following these directions will be viewed seriously.
8. Issue commission letter accordingly.

Islampur
Date: 05.02.2021

(Abhijit R. Solapure)
Civil Judge Senior Division,
Islampur