

ORDER BELOW EXH. 144 IN RCS NO. 381/ 1993

(Vasant Chavan Vs. Bajrang Shelke & Ors.)

[CNR No. MHSN05000023- 1993]

1. By way of present application, the plaintiff prayed for re-measurement of the suit property through Nimitandar i.e. Appellate Authority of measurer.
2. It is submitted that, present suit is filed for recovery of possession of encroached area wherein already suit property was measured by TILR and he submitted his report along with map. However, said report and map has been denied by the plaintiff. The plaintiff is in possession of Gat No. 662/ 6 admeasuring 17 R, it was shown in said map, but the report suggested encroachment by the plaintiff in defendants' property to the extent of 13 R. Moreover, the surveyor had specifically noted that " इकडील अभिलेख व ७/ १२ मेळत नाहीत. " In fact said suit property was measured on 10/ 06/ 1999 and its report and map is produced on record below Exh. 84. In said map the then surveyor had noted that " इकडील अभिलेखात पोट हिस्सा अभिलेख, गुणाकार बुक हिस्से, ७/ १२ व त्याचे क्षेत्र यात तफावत असल्याने कामाची पूर्तता करता येत नाही. "
3. Considering all these facts plaintiff filed subsequent

application for measurement vide Exh. 128, it was allowed and measurement through Nimitandar was granted. However, again the measurement was carried out by measurer and report was submitted about encroachment by plaintiff. The two measurement reports are not in consonance with each other. Moreover, those reports were submitted by measurer of same cadre. Thus, to settle the dispute in respect of boundaries, area and encroachment, measurement through Nimitandar is necessary. With this submission he prayed to allow the application.

4. Defendants by filing their Say strongly objected the application. It is submitted that no further measurement through Nimitandar is required. The last measurement is through competent authority. It would not be proper to say that last measurement was not at the hands of Nimitandar. The plaintiff is aware of the facts of the case that measurement in Gunakar book is not reflected in 7/ 12 extract and therefore the note of the then measurer is correct. The plaintiff tried to give go bye to the correctness of Gunakar book and wants measurement report based on record in 7/12 extract. In fact the parties are in possession in view of the area specified in Gunakar book. Therefore, the application needs to be rejected.

5. Heard both sides. Perused record and proceeding.

6. It is worth to mention here that, the suit is pending since last three decades and it is about recovery of encroached area. Already suit was once decided and it was remanded by order of appellate Court due to discrepancies in measurement. Thereafter my predecessor passed order below Exh. 128 and Nimtandar was directed for measurement. Now the plaintiff disown the said measurement and again seek measurement of suit property to ascertain the actual area under encroachment through Nimtandar.

7. It is not out of place to mention here that, the appellate Court has specifically directed while remanding the order for measurement of suit property in the light of Gunakar book which is available at Exh. 22 and Falni map at Exh. 26 of this suit. Accordingly my predecessor passed order and directed for measurement. However, as mentioned above the plaintiff denied and disown the said measurement.

8. It is settled position of law that, to ascertain the actual area under measurement, survey of land through expert is necessary. Accordingly twice suit property was measured and now the plaintiff again seek measurement. The discrepancies at the ends

of office of TILR has caused second round of litigation and still the dispute is not resolved for want of proper measurement, as contemplated by the plaintiff.

9. To ascertain the area under encroachment the appellate Court in RCA No. 33/ 2007 has specifically directed that the measurement is to be carried out in the light of record of Gunakar book and Falni map of Survey No. 662. It would not be proper to say that these documents are not available with the office of land record. The certified copies of these documents is available in this proceeding below Exhs. 22 and 26 respectively. Therefore, certainly the original will be with the competent authority i. e. Superintendent of Land Records. Prima facie record suggest that the plaintiff disputed the correctness about measurement as it was not in consonance with the entries of 7/ 12 extract. This is not the place to pass any comment in respect of correctness of the map as it was yet not proved in evidence. However, it is not out of place to mention that record does not suggest that the measurement of suit property in the light of Gunakar book and Falni map. The possession at the spot may be somehow different or some disputes regarding area under possession could have arose between the parties and therefore they have approached this Court for redressal of the dispute. It is incumbent on the part

of the office of land record for measurement of agricultural field in the light of all available documents which could throw light on the correct position of the boundaries as per their records.

10. Certainly 7/ 12 extract is one of the important piece of document which needs to be taken into consideration for determination of aspect of possession. However, it is the duty of the surveyor to measure the suit property in the light of documents available at their end.

11. The purpose of re- appointment of Court Commissioner for re- measurement work is to throw light on the maps available on record i. e. Exhs. 84 and 121.

12. On going through the available map, though it is yet to be proved, it suggest that the encroachment at the hands of plaintiff on defendants' land was shown. In fact earlier map suggest encroachment on plaintiff's land.

13. At the cost of repetition it is necessary to mention here that, in a suit for removal of encroachment and question of determination of encroached area is in consonance with the boundaries of the land. Therefore, proper measurement at the

hands of expert person and competent authority is the need for proper adjudication of the suit at finality. Therefore, considering all these aspects and availability of reports and maps of the measurement of the suit property carried out by the measurer which is disputed and disowned by the parties, it is necessary for re-measurement of suit property through Nimtandar. Thus, to avoid multiplicity of litigation, final adjudication and to decide fact-in-issue, I come to the conclusion in the light of facts and circumstances of the case and submissions of both advocates to allow the application. Hence, following order.

ORDER

1.	Application is allowed on following terms :-
(A)	Deputy Superintendent of Land Records, Walwa/ Islampur is appointed as Court Commissioner. The Deputy Superintendent shall in-person conduct the commission work of entire Survey No. 662 situated at village Walwa, Tal. Walwa, Dist. Sangli, with all care and caution, and shall not depute this matter to his subordinate, as earlier measurements were disputed and suit was remanded by the appellate Court

	due to variance and contradictions in the map and commission report.
(B)	The Deputy Superintendent is directed to carry out the measurement with the help of Gunakar book and Falni map.
(C)	The Deputy Superintendent is directed to describe the factual position of the suit property by ascertaining the actual boundaries of possession of plaintiff and defendants land parcel, as well as, area of plaintiff and defendants in the light of 7/12 extract and area under Gunakar book and Falni map. Accordingly he is directed to show the respective boundary marks on the map of the commission report. For that purpose he is directed to refer Gunakar book and Falni map.
2.	The Deputy Superintendent is directed to collect all necessary documents from the plaintiff for proper compliance of commission work.
3.	The plaintiff shall borne the cost of measurement. Plaintiff shall deposit the requisite fees in the concerned office.

<p>4.</p>	<p>Plaintiff is directed to produce in this Court the receipt of payment of measurement fees within one month from today.</p>
<p>5.</p>	<p>The suit is pending since last 30 years, hence, the Court Commissioner is directed to measure the suit property and submit his report along with map within 30 days since payment of measurement fees.</p>
<p>6.</p>	<p>The concerned clerk of this Court is directed to attach the copy of Gunakar book (Exh. 22) and Falni map (Exh. 66) with commission writ.</p>
<p>7.</p>	<p>Failure to comply with any of the directions will be considered seriously. Take note.</p>

Islampur

(M. M. Chitale)

Date : 20/ 12/ 2023

Joint Civil Judge Senior Division,

Islampur