

Order Below Exh.45 In R.C.S.No.178/2015
(Hindurao Pandurang Patil Vs. Jagannath Narayan Patil)
(CNR No.MHSN050008982015)

1. By way of present application the plaintiff prayed to recall witness.
2. It is submitted that the present suit is filed for the recovery of encroached area. The defendant encroached upon plaintiffs agricultural field Gat No.3098. Therefore to ascertain actual area court commissioner was appointed. Accordingly the suit property was measured by T.I.L.R. and he submitted his report alongwith map. Accordingly evidence was adduced but it appears to plaintiff that some clarification is required to enable court to pass the decree. Therefore prayed to allow the application and recall witness.
3. Perused the record of the proceeding.
4. Present suit is filed for the recovery of encroached area. Therefore the plaintiff has to prove actual area under encroachment, accordingly court commissioner was appointed and produced report and map. However some discrepancies are found in his evidence. Thus this application came to be filed.
5. As mentioned above considering the nature of suit it is incumbent on the part of plaintiff to prove not only title, possession but also actual area under encroachment. Therefore he examined surveyor of T.I.L.R. who measured the suit property. Now it is plaintiffs theory that some discrepancies were occurred while recording evidence.
6. The relief sought by plaintiff is based on provision under order 18 rule 17 of C.P.C., it empowers the court to recall any witness

to has been already examined and put questions to him.

7. The provision is discretionary. Considering the nature of powers invested it is necessary invoke those powers judiciously. It is intend of legislature that neither party should not cause any prejudice. At the same time the party must get opportunity to lead evidence but not to fill lacuna with intend to wipe out case of other side.

8. As mentioned above already suit property was measured by court commissioner i.e. T.I.L.R., the measurer was examined to prove the map as the map prepared for limited purposed at the instance of private party bears no presumption.

9. Now in light of above discussion if application came to be rejected it will cause serious prejudice to plaintiff and become instrumentation for another round of litigation. Considering all these aspects, I come to conclusion that plaintiff satisfactorily show the necessity to examine the witness. My view is supported by ratio laid in case of **K. K. Valusamy Vs. N. Palanisamy reported in (2011) 11 SCC 275.**

10. Thus in view of above discussion, I come to conclusion that application needs to be allowed. Accordingly following order.

ORDER

Application is allowed.

Islampur.

(Mukul M. Chitale)

Date-18.03.2024

Jt. Civil Judge Sr., Dn., Islampur.

CERTIFICATE

“ I affirm that the contents of this PDF file order are the same, word to word, as per the original order.

Name of the Steno with Post : Shri. S. K. Patil
(Stenographer Grade-II)

Name of the Court : Jt. Civil Court Senior Division
Islampur.

Date of pronouncement of order : 18/03/2024

Order signed by the P.O.on : 20/03/2024