



RCS No. 370/2022

Tukaram Vs.

Dnyanu @ Dnyandev

ORDER PASSED BELOW APPLICATION (EXH. NO. 20)

The defendant has filed the application under Order 26 Rule 9 and section 151 of the Code of Civil Procedure, 1908 (for short “the Code”) praying to appoint Court Commissioner for measurement of immovable property.

02. The defendant contends that in a compromise decree, he got possession of immovable property. In April 2022, the plaintiff encroached upon the immovable property of the defendant and carried out some construction. There requires measurement of the land of the plaintiff and defendant. Therefore, he prays for as mentioned above.

03. The plaintiff has filed his say at Exh. No. 20. He denies the contents of the application. The plaintiff contends that the defendant has filed the application with a view to collect evidence. Execution decree was not acted upon amongst the plaintiff and defendant. The plaintiff and defendant were jointly residing and they jointly carried out construction of house. Therefore, the plaintiff has not encroached on any portion. Therefore, the plaintiff prays to reject the application.

04. I perused the application, say thereon, pleadings and heard arguments.

05. Both the parties have argued as per their application and their say. The learned advocate for the defendant relied upon: 1) **Sulemankhan s/o Mumtajkhan and ors Vs. Smt. Bhagirathibai wd/o. Digamber Asalmol and Anr. (2014 (5) ALL MR 552)**. The question before the Hon'ble High Court was whether there requires re-measurement of the suit field and adjoining lands. Considering the facts and circumstances of that case, the Hon'ble High Court found it necessary to re-measure suit field and adjacent lands. 2) **Shyam Janardan Chaoudary Vs. Smt. Asha Ramdas Katkar and Anr. (2015 (1) ALL MR 48)**. The Hon'ble High Court has considered various other cases. Considering it, it is cleared that the dispute in respect of possession of alleged encroached portion can be decided when the trial court is assisted by the competent Court Commissioner who can draw the map or plan which may be agreed between the parties. Appointment of Court Commissioner can help the Court to find out whether the map and plan produced on record coming from authentic sources in the presence of agreeable map.

06. In the case at hand, the defendant has filed counter claim and in that the counter claim he has claimed that the plaintiff has encroached upon certain portion of land of the defendant. In fact, the defendant with his counter claim has placed on record hand made map, wherein, he has shown alleged encroached area. The competent Court Commissioner only can ascertain the area of that encroached portion and actual location of that alleged encroached portion, if any. In the

absence of it, the counter claim can not be decided effectively. It is not collection of evidence. It only amounts to assistance to the Court. Therefore, the application requires to be allowed. Therefore, I pass the following order.

ORDER

1. The application is allowed.
2. The Deputy Superintendent of Land Records is hereby appointed as Court Commissioner to measure the lands of the plaintiff and defendant, prepare map, show encroachment, if any and submit report with map.
3. The defendant shall directly pay charges to the office of the Deputy Superintendent of Land Records.

Miraj
Date : 02.01.2025

(R. S. Wankhede)
Civil Judge Junior Division
Miraj

C E R T I F I C A T E

I affirm that the contents of this P.D.F. file judgment/order are same, word to word, as per the original judgment/order.

Name of the Stenographer. : K. A. Udagave (Steno. - III)

Court. : Civil Judge Junior Division
and J.M.F.C. Miraj

Dictation Date : 02.01.2025

Order signed by
the Presiding Officer on. : 02.01.2025

Order uploaded on. : 06.01.2025