

**ORDER BELOW EXH – 69 IN RCS No. 08/2022**

The present application has been filed by defendant no.1, for dismissing the suit on the basis of Court Commissioner Report dated. 02.04.2024.

02. As per contention of the defendant, the present suit pertains to fixation of boundaries and perpetual injunction. The defendant no.1, in his written statement, challenged validity of sale deed dated 26.08.2010, executed in favour of the plaintiff. Thereafter, on the application of the plaintiff, this Court has appointed Court Commissioner, for the measurement of the Suit land. Accordingly, the Court Commissioner submitted his report along with map at Exh.60. The said report shows, that the plaintiff Chhabatai Kunnure does not possess, 60 R land as alleged by her. The said fact goes to show that, the sale deed dated 26.08.2010 is sham and illegal. Hence, he prayed for dismissal of the suit on the basis of the Court commissioner Report Exh.60.

03. The Plaintiff filed say at Exh71. and strongly objected to allow this application. According to the plaintiff, as per order below Exh. 26, the Court commissioner was appointed for the measurement of 0.60 R land from Gat no. 426/1, for showing encroachment upon the land of the plaintiff. However, the commissioner has not acted accordingly, The sum and substance of the say of the plaintiff is that, she is not agree with the commissioner report and map. She lastly, contented that, the the Court commissioner report is erroneous, and to bring out factual position on

record, re-measurement of the suit property is necessary. Hence, prayed for rejection of the application.

04. Considering the contentions of both sides, documents on record and arguments advanced by learned advocates for both sides, following points arise for determination and my findings against each of them for the reasons given below :

Sr. No.	POINTS FOR DETERMINATION	FINDINGS
1.	Whether the suit is liable to be dismissed on the basis of Commissioner report Exh.60 ?	No
2.	What Order ?	Application is rejected

REASONS

05. The present suit has been filed by the plaintiff seeking fixation of four boundaries and a perpetual injunction. The plaintiff claims to be the owner and possessor of the suit property. She has alleged that the defendants are interfering with her peaceful possession by tampering with or destroying the original boundaries of the property. Defendant Nos. 1 to 3 and 7 have appeared before the Court and filed their written statement, in which they challenged the validity of the sale deed executed in favour of the plaintiff.

06. Pursuant to the application filed by the plaintiff at Exhibit 26, Court Commissioner was appointed, to carry out a measurement of both the suit property and the land belonging to Defendant No. 1 from Gat No. 426/1. The Court Commissioner conducted the measurement and has submitted his report at Exhibit 60. Now, the suit is pending for filing of say/objections on the Commissioner's report. This is when, the application under consideration has been filed by the defendant no.1.

07. Learned Advocate for the applicant/Defendant No. 1 submitted that the Court Commissioner's report at Exh. 60 clearly reveals that the plaintiff is not in possession of 60 R land, as claimed in the plaint. Therefore, it is contended that the cause of action no longer survives, and the suit is liable to be dismissed at this stage by invoking powers under Section 151 of The Code of Civil Procedure (in short CPC).

08. Ld. advocate for defendant no.1 has relied upon decision of Hon'ble Bombay High Court in Kamladevi Raychand Shah & Ors. vs. Bhupendra Yashwant Ajinkya & Ors (2024(6) Mh.L.J. 63) Wherein it is observed that Court has power under Sec 151 of CPC to dismiss the suit in view of subsequent event whereby cause of action itself disappears.

09. In response, the learned Advocate for the plaintiff submitted that the Commissioner's report is yet to be proved in accordance with law, and the plaintiff does not accept the contents of the said report. It is contended that relying on such an unproved report to seek dismissal of the suit would be improper. Hence, the plaintiff has prayed for dismissal of the present application.

10. It is noted that a Court Commissioner was appointed to inspect the suit property and submit a report regarding the alleged encroachment. Accordingly, the Commissioner has submitted his report Exh.60.

11. As per Section 83 of the Indian Evidence Act, Section 83 of the Indian Evidence Act, 1872, states that the court must presume that maps and plans made by the authority of the Central or State Government are accurate. However, for maps or plans made for a specific legal case, the party presenting them must prove their accuracy, and the court is not required to presume their correctness.

12. However, in the case in hand, the map is prepared for the private purpose. The evidence of parties, is yet to be started. Therefore, the Commissioner's report and the accompanying map have not yet been proved in accordance with law. Thus, Unless and until the map is duly proved, it cannot be treated as a part of evidence or relied upon to reach a conclusive finding on that basis.

13. In Kamladevi (supra), during the pendency of a suit, the identity of defendant merges with the plaintiff and therefore, the suit become in fructuous or untenable as the plaintiff is effectively seeking relief against himself. However position is different in the present case. Hence, the facts from Kamladevi (supra) and case in hand are different hence, not applicable.

14. Taking into consideration all the above facts, in the absence of formal proof of the Commissioner's report, it cannot be hold that the cause of action no longer survives or that the plaintiff's claim is rendered

untenable at this stage. Accordingly, the prayer for dismissal of the suit on the basis of the said report is premature and cannot be entertained. Hence, in view of above facts, I answer point no. 1 in negative.

POINT NO. 2 :-

15. In view of discussion as to point no. 1, I pass the following order.

O R D E R

1. Application is hereby rejected.
2. Costs shall follow the event.

Date :- 16/10/2025
Place :- Kavathe Mahankal

(M.A.Kulkarni)
Jt. Civil Judge Junior Division,
Kavathe Mahankal