

ORDER BELOW EXH.1 & 72

(Passed on 06.04.2016)

Received on : 04.02.2009

Registered on : 18.02.2009

Decided on : **06.04.2016**

Duration: 7Yrs. 1Month 18 days

JUDGMENT ON ADMISSION

(Order XII rule 6, Code of Civil Procedure)

1. This is a suit for measurement of land and fixation of its boundaries in respect of the agricultural land situated at village Kasabe Jath, taluka – Jath bearing old survey No.547 and new survey No.490/1A area 3 hector 10R, 490/1B area 3hector 10R, survey No.490/B area 1hector 21R, more particularly described in plaint para 1 (hereinafter referred as '**suit property**').

2. It is the contention of plaintiffs that the suit property was owned by Hasanso Mahamadso Mujawar. The suit property is possessed as tenant by Tukaram Dhula Maharnur, who is father of plaintiff No.1 and brother of plaintiff Nos.2, 3. Out of suit property, the original owner had sold approximately 3 acre land on 17.05.1958. The remaining land of 3hector 36R was and is in possession of the father of plaintiff No.1 and plaintiff No.2,3. There is no measurement of survey No.490 till today. The father of defendant Nos.1,2 purchased remaining land towards northern side from the said owner. That time also the measurement of the suit property was not done. Plaintiff No. 1 has purchased his 5anne 4pai share out of survey No.490/2 on 26.05.2005.

Three east-west strips are formed. Plaintiff No.1 is possessing towards north side, towards south plaintiff No.2 Dnyanu and towards south plaintiff No.3 Babaso.

3. It is further contention of plaintiffs that Parshuram Dafale had done partition between defendant No.1,2 and other brothers without measurement of the suit property. Plaintiff made an application to Tahasildar, Jath vide section 20(2) of Maharashtra Land Revenue Code for measurement of suit property and correction in 7/12 extract. The said application is sanctioned and forward to TILR, Jath for further process. However, TILR instructed that the suit property cannot be measured without consent of defendant Nos.1,2 and other brothers. Hence, plaintiffs prayed that TILR, Jath be appointed as the court commissioner for the measurement of suit property and boundaries be fixed by fixing the boundary marks.

4. Defendants have filed application vide order XII rule 6 of the Code of Civil Procedure at Exh.72 along with the supporting affidavit and contended that they have no objection for the measurement of suit property and fixing the boundaries with the cost of plaintiffs.

5. From the above controversial facts and circumstances of the case my Learned Predecessor have framed issues at Exh.27. Thereafter, in view of the amended written statement in counter claim at Exh.34 additional issue was framed. Thereafter, in view application below Exh.49 issues are re-framed vide order 14 rule 5 of the Code of Civil Procedure. The following issue in respect of the admitted facts by the

plaintiff and defendant vide Exh.72 in consonance with issues at Exh.27, I have reproduced the issue No.2 at Exh.27 and I have the same and recorded my findings thereon for the reasons given there under, to the extent of issue No.2 only.

<u>S.N.</u>	<u>Issues</u>	<u>Findings</u>
1	Whether plaintiff is entitled for measurement of suit property having Survey No.490 (old Survey No.547) and for fixing the boundaries ?	: Yes, to the extent as prayed in Para 12(a) &(b) of suit plaintiff .
2	What Order ?	: As per final order.

REASONS

6. Heard Ld. Adv. Shri. T. S. Shaikh for plaintiffs and Ld. Adv. Shri. V. S. Walujkar for defendants.

As to Point No.1 (Issue No.2):

7. Defendant No.1 Vikram Yashwantrao Dafale filed application under order XII rule 6 of the Code of Civil Procedure below Exh.72 along with supporting affidavit at Exh.73. It is submitted by the defendant that they have no objection for the measurement of suit property and fixing the boundaries at the cost of plaintiffs. Hence, the prayer of plaintiffs may be allowed in view of para 12(a)& (b) of the suit plaintiff be allowed accordingly. Plaintiffs have filed their say stating that the application be allowed in view of their prayers at para 12(a)&

(b) of the suit plaint.

Judgment on admissions:

8. Order XII Rule 6 of the Code empowers the court to pronounce a judgment upon the admissions made by the parties without waiting for determination of any other question between the parties. The object of the rule is to enable a party to obtain a speedy judgment, at least to the extent of the relief to which, according to the admission of the opposite party, he is entitled to. A party can, under this rule, move for a judgment upon the admission made by the opposite party and thus get rid of the portion of the action in which there is no dispute.

9. The power to give judgment under this rule is discretionary and enabling in nature and the party cannot claim it as of right. The court is also not bound to pass a judgment upon admission. If the court is of the opinion that it is not safe to pass a judgment on admission, or that a case involves question which cannot be appropriately dealt with and decided on the basis of admission, it may, in the exercise of its discretion, refuse to pass a judgment or may insist upon clear proof of even admitted facts. Moreover, before pronouncing a judgment on admission, the court must be satisfied that the admission is definite and unequivocal (*vide Razia Begum vs. Anwar Begum, AIR 1958 SC 886*)

10. Plaintiffs has taken the matter on today's cause list and produced citation in support of their contention and relied on ratio laid in the case of S. M. Asif vs. Virender Kumar Bajaj, reported in 2016(2)

Mh.L.J., wherein Hon'ble Apex Court held that,

“The words in Order XII, Rule 6, Civil Procedure Code “may” and “make such order ...” show that the power under Order XII, Rule 6, Civil Procedure Code is discretionary and cannot be claimed as a matter of right. Judgment on admission is not a matter of right and rather is a matter of discretion of the Court. Where the defendants have raised objections which go to the root of the case, it would not be appropriate to exercise the discretion under Order XII, Rule 6, Civil Procedure Code. The said rule enabling provision which confers discretion on the Court and delivering a quick judgment on admission and to the extent of the claim admitted by one of the parties of his opponent's claim”.

The defendants have filed their written statement and counter claim vide order XVIII rule 1 and rule 6A at Exh.22 on 06.01.2010 plaintiffs and defendants both have lead their evidence. Plaintiffs have closed their evidence below Exh.54 dated 25.02.2015 and defendants have closed evidence by filing pursis at Exh.64 dated 02.09.2015. As the evidence of both parties are closed. The defendant moved an application admitting the portion of the prayers of the plaintiffs to the extent of para 12 (a) & (b) of the suit plaint only. Thus, in view of above discussion and the ruling cited, I answer point No.1 in respect of issue No.2 at Exh. 27 in affirmative.

As to point No. 2:

11. In view of finding on point No.1, Dy. Superintendent of Land Record Office, Jath is appointed as the Court Commissioner. Plaintiffs and defendants both are directed to be present along with their counsels for the measurement and fixation of boundaries by the court

commissioner. The plaintiffs shall bear the cost of the court commissioner as prescribed by the rules fixed by Dy. Superintendent of Land Record Office, Jath. Hence, the order.

ORDER

1. The suit decreed to the extent of issue No.2 at Exh. 27, vide order XII rule 6 of the Code of Civil Procedure.
2. Dy. Superintendent of Land Record Office, Jath is appointed as the Court Commissioner to measure the suit property as mentioned in para 1 of suit plaint and submit his report on or before 27.04.2016.
3. The plaintiffs have directed to supply the requisite documents for the compliance of writ in respect of the court commission forthwith.
4. The plaintiffs shall bear the cost of the court commissioner as prescribed by the rules fixed by Dy. Superintendent of Land Record Office, Jath
5. Issue writ accordingly.

(Pronounced in open Court)

Date: 06.04.2016.
Jath.

Sd/-
(K. M. Chakranarayan)
Jt. Civil Judge, Jr. Division,
Jath, Dist. Sangli.