

**Order Below Exh. 9**  
(Passed on 31.07.2020)

1. This is an application filed by plaintiffs under order 26 rule 9 of the Code of Civil Procedure, 1908 seeking direction of appointment of Court Commissioner for the ascertainment of the factual position about boundary marks of Block no. 654/2/J i.e. (654/2/ज) and existence of the road.

2. The case of plaintiffs in short:

The suit is for perpetual injunction. It is the contention of plaintiffs that, the defendants are using illegal means and started disputing the boundary of plaintiffs suit property. It is further contention of plaintiffs that, defendants by using JCB machine encroached in the suit property admeasuring 20 to 25 ft area for road and also started obstructing plaintiffs possession by digging a pit. It is further contention of plaintiffs that, unless the suit property is measured through Government measurement the factual position will not be clear. Plaintiffs further contend that, by this measurement no prejudice would be caused to defendants. Moreover, the measurement will help to decide the dispute between parties on merit. Plaintiffs prayed for the measurement of Block no. 654/2/J I.e. (654/2/ज) through TILR, Jath.

3. Defendant no. 1 and 2 have filed their no objection to this application. Plaintiffs through pursis at Exh. 22 deleted the name of defendant no.3 as no relief was sought against him.

4. Considering the rival pleadings of the parties, following points arise for my determination. Those points with their findings are as below:

<u>S.N.</u>	<u>POINTS</u>	<u>FINDINGS.</u>
1.	Whether the appointment of Court Commissioner is necessary for the purpose of elucidating the matter in the dispute ?	...Yes.
2	What order ?	The application is allowed.

### REASONS

#### Point No.1:

5. The Learned Adv. Shri. V. S. Desai for plaintiffs no. 2 to 7 and as a party in person for himself submitted that, there is dispute regarding the boundaries of Block no. 654/2/J i.e. (654/2/ज) hence unless the same is measured the existence and position of the road cannot be ascertained. He further submitted that, if the measurement is carried out it will help the Court to decide the dispute between parties efficiently. He prayed to allow the application.

6. The Learned Adv. Shri. P. A. Naik for defendant no. 1 and 2 submitted that, they have no objection to carry out the measurement of Block no. 654/2/J i.e. (654/2/ज).

7. Perused the application, say, documents and record filed by both parties. The object of local investigation is not to collect the evidence but it enables the court to properly and correctly understand and assess the evidence on record and clarify any point which is left doubtful. It also helps the court in deciding the question in controversy pending before it.

8. In the instant case plaintiffs requested Court Commissioner to ascertain the existence and extent of road and the boundaries of Block no. 654/2/J i.e. (654/2/ज). The measurement of Block no. 654/2/J i.e. (654/2/ज) will help in clarifying the boundaries of Block no. 654/2/J i.e. (654/2/ज). This measurement will also be helpful for determining the existence if any of the road. Defendant no. 1 and 2 who are adjacent owners have shown their no objection for this measurement. The measurement will help decide the suit on merits. No prejudice would be caused to defendants and they will be at liberty to adduce evidence challenging the map during trial. Hence, the submission of learned Advocate for plaintiffs regarding need of measurement seems acceptable. Therefore, I proceed to pass following order,

### **ORDER**

1. Application is allowed.
2. The T.I.L.R., Jath is appointed as Court Commissioner.
3. The Court commissioner is directed to conduct court commission after following survey manual in the light of application, say of defendants, plaint and written statement and shall measure Block no. 654/2/J i.e. (654/2/ज) situated at village Jath, Taluka – Jath, prepare a detailed map depicting the boundaries of the aforementioned Block number.
4. Court commissioner shall file his report within 90 days from the date of receipt of writ of commission.
5. The cost of commission process shall be borne by the plaintiffs and accordingly shall deposit the commission

fees as per rules and procedure in office of T.I.L.R., Jath within 14 days from today.

6. Plaintiffs shall supply all the necessary documents and all necessary facilities to the Court Commissioner.
7. Both the parties are directed to present with the Court Commissioner at the time of measurement, preferably with their advocates.
8. Upon failure to comply the order as above by the plaintiff, the above order shall stand vacated.

Place: Jath  
Date : 31.07.2020.

(Shirishkumar D. Waghmare)  
Jt. Civil Judge, Jr. Division, Jath.  
Dist. Sangli.

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

Name of steno : M. M. Buchade,

Name of court : S. D. Waghmare,

Jt. C.J.J.D.& J.M.F.C., Jath,

Date : 31.07.2020

Judgment/order signed by Presiding Officer on : 31.07.2020

Judgment/order uploaded on : 31.07.2020