

Order below Exh.50 in

R.C.S. No. 04/2015

CNR-MHSN-12-000017-2015

(Ganpat Navadkar Vs. Vitthal Mahadik & Ors.)

This is an application filed by the plaintiff for appointment of TILR, Palus as court commissioner to ad-measure jointly block nos.2459 and 2458 situated at village – Kundal, Tal.- Palus, Dist.- Sangli.

2. It is the case of plaintiff that defendants from the southern side has made encroachment to the extent of 0 H 36R . The block no. 2459 is belonging to plaintiff and adjacent block no. 2458 is belonging to defendants. Hence, plaintiff instituted the suit for removal of encroachment as well as for possession of encroached area and for mandatory injunctions. It is averred by the plaintiff that joint measurement of block no. 2459 and 2458 is essential to resolve the real controversy in dispute and for that purpose TILR, Palus be appointed as court commissioner.

3. The defendant has filed his say vide exh. 16. According to him, application is not maintainable as prayed for and it is filed for collection of evidence. It is further contended that already previous occasion measurement of suit property has been done. Hence, there is no necessity of re-measurement.

4. The learned advocate for plaintiff has argued that even though earlier measurement was carried out but joint measurement is essential. Unless and until joint measurement is done factor of encroachment cannot be determined. He further argued that defendants have constructed the house towards eastern and southern side and agricultural property of the defendants is also required to be measured, hence, there is extreme urgency to decide the application

as early as possible. Therefore, application be kindly decided urgently.

5. The learned advocate for the plaintiff has further argued that appointment of TILR, Palus as court commissioner is essential. There is boundary dispute as well as there are allegations of encroachment, hence, it always desirable to have measure the disputed suit property by competent surveyor to find out encroachment. Oral evidence cannot prove the allegation made by the plaintiff in respect of encroachment made by the defendants.

6. On the other hand, learned advocate for the defendant strongly opposed the application. According to him, application is filed for collection of evidence, therefore, application be rejected.

7. Prima-facie it appears that measurement of block no. 2459 has been done but, no joint measurement has been done. It is well settled that to resolve the controversy of encroachment joint measurement is always essential. It is well settled that oral evidence is not sufficient to prove the factor of encroachment and it is desirable that in a boundary disputed land should be measured by the competent surveyor. According to this court, there is necessity to carry out joint measurement of the block nos. 2459 and 2458, because, joint measurement is essential to determine the factor of encroachment. Even if the measurement is done by TILR, Palus then it will not amount to collection of evidence. Considering the urgency shown by the plaintiff application is decided on merits. Accordingly, I pass the following order.

ORDER

1. Application is allowed.
2. T.I.L.R. Palus is hereby appointed as a Court Commissioner and he is directed to ad-measure the entire land of block nos. 2459 and 2458 situated at village- Kundal, Tal.-Palus, Dist.-Sangli and submit his report along with the detailed map showing the encroachment if any, within six months from the date of this order.
3. Plaintiff is hereby directed to deposit the whole commission fee in the office of T.I.L.R. Palus, as per rules.
4. Plaintiff is hereby directed to file xerox copy of the receipt of deposit of commission fee in the court within four weeks from the date of this order.
5. T.I.L.R., Palus is directed to issue previous notice to all adjacent land holders before making the measurement. T.I.L.R. Palus is also directed to show further things in the map such as house, electric poles, well, trees and other essential things which he deems fit.
6. Issue commission writ to T.I.L.R. Palus, accordingly. The T.I.L.R. Palus shall carry out the commission work as per the provisions of survey manual.

Date : 18/10/2021
Place : Palus.

Sd/-
(N.D. Rudrabhate)
Jt.Civil Judge Jr.Dn., Palus

that, the contents of this P.D.F. file are same, word to word, as per the original.

Name of Stenographer : Pravin G. Sabale

Court : Jt. C.J.J.D. & J.M.F.C., Palus

Date : 18/10/2021

Signed by the Presiding : 18/10/2021
Officer on

Uploaded on : 20/10/2021