

CNR NO- MHSO060014542021

R.C.S.No.91/2021



Vasant Bhimrao Ghule

Vs

State Of Maharashtra etc 7

ORDER BELOW EXH.65 IN
R.C.S.NO.91/2021

01. Present application is filed by plaintiff under Order 26 Rule 9 of the Code of Civil Procedure thereby requesting to appoint Dy.S.L.R., Pandhapur as court commissioner for conducting the joint measurement of land Gat No.1 and 716 of village Patwardhankuroli, to fix the four boundaries and to submit the report.

02. It is contended that, there is a road from eastern side of the suit property, there is dispute about the encroachment and the measurement of the road amongst the parties. As per the application filed by plaintiff, the Dy.S.L.R. was appointed as court commissioner for joint measurement who filed his report. It is mentioned in the report that unless and until the portion (Pot Hissa) is not measured, it is not possible to show the exact encroachment on the Patkuroli-Pehe (Narsinghwadi) road. Therefore, now it is just and necessary to conduct the joint measurement and to fix the four boundaries of Gat No.1 and 716 from village Patwardhankuroli to decide the suit on merit.

03. Defendant opposed the application by filing say below **Exh.67 and 68**. It is their contention that, as per the measurement rules the portion (Pot Hissa) can not be measured, only to protract the trial instant application is filed. Already in measurement No.(मो.र.नं.5461/2020) joint measurement is conducted and it's report is already on record. Subsequently, as per the plaintiff's application again in the measurement No. (मो.र.नं.1071/2022) again joint measurement is conducted and report

is placed on record. If plaintiff is not satisfied with the report then he has to move before Superintendent of Land Record independently for conducting Nimtandar Mojani. The suit is filed for perpetual injunction against defendants, therefore, the relief sought for in this application can not be granted. Already Dy.S.L.R. Pandharpur conducted the measurement twicly regarding the road i.e. Patkuroli-Pehe(Narsinghwadi) road and it is abundantly clear from that plaintiff's house is situated on the road in the form of encroachment and plaintiff is seeking relief that the same shall not be demolish illegally. Considering the relief claimed in the suit there is absolutely no need to conduct the portion (Pot Hissa) measurement of both the lands. Only to prolong the matter plaintiff has filed false application, hence prayed for it's rejection.

04. Heard both side at length. Record & Proceeding is perused.

05. Following point arises for my determination, I have recorded my findings thereon for the reasons discussed below.

No.	Points	Findings
1	Whether it is just and proper to re-appoint the court commissioner ?	No.
2	What order ?	Application is rejected.

Reasons

As to point No.1 :-

06. The suit is filed for perpetual injunction thereby contending that the plaintiff is owner and possessor of land Gat No.1/1/b/1 admeasuring 45R. situated at village Patwardhankuroli, Tal. Pandharpur, Dist. Solapur wherein he is having his house bearing Grampanchayat No.968 admeasuring 12 mtr. x 30 mtr. It is the plaintiff's case that towards

eastern side of his house there is Patkuroli-pehe (Narsinghwadi) road. According to plaintiff though the house is situated within his property still defendants are trying to illegally demolish the same, hence the suit.

07. As per the application filed by plaintiff below Exh.41, already the Superintendent of Land Record was appointed as court commissioner for conducting the joint measurement of the suit property, land Gat No.716 and patkurolli-pehe(Narsinghwadi) road. At that time absolutely no directions were given to fix the four boundaries of land Gat No.1 and Gat No. 716 on Patkuroli-pehe road.

08. The court commissioner filed report below Exh.61 thereby informing that the joint measurement is conducted in presence of both the parties. Map is prepared and submitted before the court. It is informed that the office is having the record of entire land Gat No.1 and 716 but they are not having the record of sub-portion and therefore it is not possible to fix the four boundaries of Gat Nos.1 and 716.

09. It is pertinent to note here that, the Dy.S.L.R. Pandharpur conducted the measurement of land Gat No. 1, Gat Nos. 716, 718 from village Patwardhankuroli for almost four times i.e. in measurement No. मो.र.नं. 5460/20, 5461,20, 5480/2020 and recent measurement i.e. मो.र.नं. 1071/2022 . The map submitted by the Dy.S.L.R., Pandharpur below Exh.61 and the map prepared in the previous measurement are perused from which it is crystal clear that some portion of plaintiff's house is situated on the road. This fact is repeatedly observed by DY.S.L.R. while conducting all the four measurements and the same goes against the plaintiff and his case.

10. As observed above, in the order Exh.41, no specific directions were issued by my Predecessor for fixation of four boundaries of land Gat No.1 and Gat No. 716, therefore without challenging that order, now

plaintiff again can not seek the same relief before this court vide this application. Moreover, considering the nature of the suit and the relief claimed therein and taking into account in all four measurements and the map prepared by Dy.S.L.R., Pandharpur I am of the opinion that, to decide the fact in issue, there is absolutely no need for fixation of four boundaries as prayed. In all the measurements, the existence of Patkuroli-pehe (Narsinghwadi) road is specifically shown with the specific marking of plaintiff's house, some portion of which is situated on this road. By no stretch of imagination it can be hold that the portion of plaintiff's house on the road is situated in the suit property. In all, I am of the considered opinion that, the relief sought by the plaintiff vide this application is devoid of merits, hence, same can not be granted. In view of this, I answer point no.1 in negative .

As to point No.2 :-

11. Considering all these aspects following order is passed.

Order

- 1) Application is rejected.
- 2) Cost in cause.

Dt. 17/09/2022

(A. A. Khandale)
2nd Jt. C.J.S.D. Pandharpur

CERTIFICATE

I, affirm that the contents of this PDF file Order/Judgment are same word to word, as per the original order/Judgment.

Name of Employee	:	Shirsikar V. G., Stenographer
Court	:	2 nd Jt. C.J.S.D. Pandharpur
Date	:	17.09.2022
Judgment/order signed by	:	
the Presiding Officer on	:	17.09.2022
Judgment/Order uploaded	:	
on	:	17.09.2022
