

RCS No.392/2022.
Old RCS No.374/2018
Saroj Hemant Kalekar v.
Abhijit Anant Kalekar
CNRNOMHSO100016622022

ORDER BELOW EXH.38
(Passed on 28/03/2024)

This is application for nimtana measurement of gat No.750/1.

2. In short it is application that the measurement of gat No.750/1 is carried on 18/08/2022 that measurement is not accepted to the plaintiff. At the time of measurement an encroachment is shown by hands of defendant over the suit property. The measurer had fixed a boundary with the help of iron rod, but in measurement map encroached portion is very of small area mentioned. Therefore, it is necessary, to measure the suit property as per original map and for fixation of boundaries and to show an encroachment over the suit property.

3. To this application the defendant has submitted his say below Exh.41 that measurement is carried out in the year 2011, 2018, 2019 and as per the order below Exh.23 measurement and boundaries are fixed. The plaintiff has accepted the measurement. As per wish of plaintiff the encroachment is not disclosed, therefore present application is submitted be rejected.

2 RCS No.392/2022(EXH.38)

4. I have heard learned advocate of plaintiff. The defendant and his learned advocate are absent inspite of several call. The suit is for removal of encroachment and for perpetual injunction. As per order below Exh.23 Deputy Superintendent of Land Records, Malshiras is appointed for court commissioner. The officer has carried out measurement but as per submission of learned advocate of plaintiff, the measurement is not carried out as per the record. The measurement report is at Exh.36. The suit is pending from 2018. It is not stage to make comment that the measurement report Exh.36 is wrongly prepared. The learned advocate of plaintiffs submits that prior notice of measurement are not issued. Non issuance of notice to the adjacent land owner will definitely defects to the report. Therefore, it is not necessary, to wait for evidence of the concerned measurer. Hence, in the result, I Pass the following order :-

ORDER

1. The Deputy Superintendent of Land Records, Malshiras is appointed as court commissioner to measure the suit property along with other properties situated within four boundaries of gat No.750/1 (old No.1461/1) by issuance of notices to land owners and also adjacent land owners.
2. The measurer shall carry out measurement on basis of authenticated map which is available at their office.

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3. Plaintiff shall bear cost of measurement.

4. Issue writ accordingly.

Sd/-

Date-28/03/2024.

(U.V.Joshi)

Civil Judge Senior Division, Malshiras.