

Common order below Exh. 6 and 17 in R.C.S.NO 521/2016.
(CNRNO. MHSO11-000789-2016)

These both the applications have preferred by plaintiffs and defendants respectively for appointing D.S.L.R. Malshiras, as a court commissioner for measurement of suit property and property of the defendants .

2. According to plaintiffs they filed the suit for measurement, demarcation and fixation of boundaries of suit property Gat No. 227 situated at villa ge Dharpuri, Tal. Malshiras. Defendants are not all concern with the suit property They without any reason raised the dispute of boundaries. They tried to encroach the suit property. They tried to dug the suit property for their proposed construction. Therefore, for just decision of case on merits measurements at the hands of D.S.L.R. is necessary by appointing him as a court commissioner. Thus, they prayed to allow the application.

3. Defendants have strongly resisted the said application by filing their Say at Exh.18. According to them application is not legally tenable. All the contents are vague and based upon surmises and conjunctures . Relief claim by plaintiff is inconsistent with their main relief claimed in suit. Plaintiff suppressed various material facts. He provided false four boundaries. He has not given details of divisions of Gat Nos. 218 and 216. Plaintiff has no right to claim the relief of measurement. They further contended that, only by measuring the suit property no purpose will be sufficed, on the other hand measurement of the property of defendants bearing Gat No. 218 is also requires to be measured and plaintiff shall pay the costs of measurement. Lastly, they prayed to reject the application.

4. Defendants have contended in their application below Exh.17 that, suit of plaintiff is pending. There is 8 R. property of defendant Nos. 1 to 3 is situated beside the east-northern corner of suit property. There are old houses of defendants. There is dumping place beside the house of defendants. Therefore, ascertaining the true position at spot, appointment of court commissioner is necessary. They prayed to allow the application.

5. Plaintiffs strongly resisted the application by filing Say below Exh.22. According to them, application is not legally tenable. Defendants wants to collect the evidence with the help of court. There is dispute about the boundaries amongst plaintiff and defendants as per government record. Therefore, court commissioner cannot be appointed. They prayed to reject the application.

6. Heard Ld. Adv. Shri. S.B. Deo for plaintiffs and Ld. Adv. Shri. R.S. Patil for defendants at length. In view of rival pleadings of the parties, following points arise for my determination and I have record my findings thereon for the reasons to follow :

	Points	Findings
1	Whether these application requires consideration ?	Yes.
2	What order ?	As per final order.

R E A S O N S

As to Point Nos. 1 and 2 :-

7. It is fact that, present suit is filed by plaintiffs seeking relief of measurement, demarcation and fixAtion of the boundaries of suit property. There appears to be boundary dispute amongst the parties to the suit. More particularly it appears that, they strongly

disputed the east-northern side corner of the suit property. They made allegations about encroachment made. In the circumstances so as to just decision of the case on merits, and to elucidate the dispute involved in the case at hand. I am of the opinion that, both applications are requires consideration. Moreover, both parties are requires to bear their own costs, which incurred of measurement of their respective properties. Therefore, I answer point No.1 in affirmative and in answer to point No.2, I proceed to pass following order.

O R D E R

- 1) Application Exhs. 6 and 17 are allowed.
- 2) Dy.S.L.R. Malshiras is appointed as a court commissioner. He shall visit the suit land Gat No. 217 and 218 situated at village Dharpuri, Tal. Malshiras. He shall inspect the same and prepare the report shown the encroachment if any, in clear terms with all necessary details as per measurement manual and by keeping necessary survey record, phalni patrak etc. along with him while measurement.
- 3) He also issue prior notice of measurement date to both parties which could received them at least eight days prior to date of measurement.
- 4) Plaintiffs and defendants are directed they shall submit the necessary documents of 7x12 extract of her property and the adjacent landholders within 15 days from this order.
- 5) Plaintiffs are directed they shall pay necessary measurement fees of the Gat No. 217 and defendants are directed they shall pay necessary measurement fees of Gat No. 218 directly to the office Dy.S.L.R. Malshiras, in any case within 30 days from this order and made compliance report to this court. In default this order stands automatically vacated.
- 6) Concern Clerk Shri. Bhinge, is hereby directed , he shall forthwith sent the Writ to the concern office in any case within two days from this order.

Dt. 10-1-2018.

2nd Jt. Civil Judge J.D.,Malshiras.

Certificate

I affirm that the contents of this P.D.F. File order are same word to word as per the original order.

Name of the Stenographer : J.K. Maindargi,

Name of the court : 2nd Jt. Civil Judge J.D. Malshiras.

Order signed by Presiding Officer on : 10-1-2018.

Order uploaded on : 12-1-2018.