

ORDER PASSED BELOW EXH. 51

The plaintiff has filed this application for appointment of Court Commissioner. Succinctly, he has submitted that, he owns and possesses the agricultural lands bearing Gat Nos. 19 and 20 at Mouje Hingani (R), Taluka Barshi. Said agricultural lands Gat Nos. 19 and 20 are adjoining to each other. Said agricultural land Gat No. 20 is in the southern side of agricultural land Gat No. 19.

02. The plaintiff has further submitted that, in the eastern side of the said agricultural lands Gat Nos. 19 and 20 there are agricultural lands Gat Nos. 12/1 and 12/2 which are the sub-divisions of original agricultural land Gat No. 12. Said agricultural land Gat No. 12/1 is again sub-divided into Gat Nos. 12/1/A and Gat No. 12/1/B/1 and said agricultural land Gat No. 12/2 is further sub-divided into Gat Nos. 12/2/A, 12/2/B and 12/3/B.

03. The plaintiff has further submitted that, the said agricultural lands Gat Nos. 12/1 and 12/2 are belonged to defendant Nos. 6 to 10. Hingani Kathi road goes through the western side of said agricultural lands Gat Nos. 12/1 and 12/2 and it is at a distance of about 35 to 40 feet from the western *Bandh* of the said Gat numbers. However, defendant Nos. 6 to 10 have encroached upon the said road and even they have taken their encroachment to some extent in the suit properties. They complained the matter to defendant Nos. 1 to 5, but all proved to be in vain. Defendant Nos. 6 to 10 are creating dispute regarding existence, location, identification and boundary marks and *Bandh*. Defendant Nos. 6 to 10 are also trying to encroach more and more area. They are not also ready to conduct the measurement. With such submissions, he has prayed to appoint the Court Commissioner

and direct him to submit his report along with the measurement map.

04. Defendant Nos. 6 to 10 have contested the application by filing their reply at Exh. 55. They have denied the allegations leveled against them by the plaintiff. Succinctly, they have submitted that, this application has been filed to collect the evidence. The dispute cannot be resolved by measurement. With such submissions, they have prayed to reject the application.

05. This application is proceeded without reply against defendant Nos. 2 and 4. Further, the suit is already proceeded *ex-parte* against defendant Nos. 1, 3 and 5.

06. I have heard arguments of learned Advocates for the plaintiff and defendant Nos. 6 to 10. So also, I have perused the record of the case. It appears that, there is dispute regarding location of the agricultural lands of the plaintiff and there is a boundary dispute between the parties. In this view of the matter, in my considered opinion, local investigation of the above noted agricultural lands of both the parties and said Hingani Kathi road is necessary. It is also necessary to measure the said agricultural lands as per the Government Record. In the case of **Kashinath Chindhuji Shastri Vs. Haribhau Nathuji Bawanthade [(2004) 2 Mah LJ 722]** the Hon'ble Bombay High Court in para 7 has observed as follows:

“7. I may usefully refer the decision of our High Court in the case of Krishnarao v. Mahadeorao 1953 N.L.J. Note 230 at page 72 wherein it has been observed that under Order XXVI, Rule 9 of the Code of Civil Procedure, the Court has the discretion to order local investigation or not. The

object of the local investigation is not so much to collect evidence which can be taken in Court but to obtain evidence which from its pecuniary nature can only be had on the spot. The cases of boundary disputes and disputes about the identity of lands are instances, when a Court should order a local investigation under Order XXVI, Rule 9 of Code of Civil Procedure - 12 I.C. 347 Foll. In order of determine whether there has been an encroachment, it is always desirable to get the fields measured by an expert and find out the area encroached upon. Oral evidence cannot conclusively prove such an issue.

(underlining is mine)

In the light of aforesaid discussion, it is just and proper to allow the application. Hence, I pass following order:-

ORDER

The application at Exh. 51 is allowed.

02. TILR Barshi is hereby appointed as a Court Commissioner and he is directed to conduct joint measurement of the agricultural lands Gat Nos. 12/1 and 12/2 and its sub-divisions and agricultural land Gat Nos. 19 and 20 at Mouje Hingani (R) Taluka Barshi, District Solapur and find out the location of Hingani Kathi road and also to find out whether the said road has been encroached upon ? Whether there is any encroachment in the agricultural lands of the plaintiff ? And submit his report along with the measurement

map within one month from the date of receipt of this order.

03. The plaintiff shall bear measurement charges as per law.

04. Inform the TILR, Barshi accordingly.

Date : 01.08.2023

(Ankush P. Khanorkar),
Civil Judge, Senior Division, Barshi.

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 the Stenographer : S. N. Chilka
Court : Civil Court Senior Division, Barshi.
Judgment / Order signed by the P. O. on : 01.08.2023
Judgment / Order uploaded on : 02.08.2023