

Order Below Exh.17 in R.C.S.No. 497/2017

This application is filed by the defendants under Order XXVI Rule 9 of the Code of Civil Procedure for appointment of court commissioner. The facts necessary for the disposal of said application are as under:-

2] The plaintiff has filed this suit for injunction to restrain the defendants from obstructing peaceful possession of his land by making encroachment over his land. Defendant No.7 has also filed the same suit bearing No.451/2017. Gat No.260 is divided in total 8 parts. There are boundary disputes between the co-sharers of Gat No.260. The said land is measured vide M.R.No.4475/2016. However, the measurement of whole Gat No.260 was carried out. Therefore, by way this application, the defendants have prayed for measurement of Gat No.260/1 to 260/8B. Hence this application.

3] The plaintiff has resisted the said application by filing his say at Exh.19. According to him, this application is filed only to prolong this proceeding and to collect the evidence. He further submitted that the application is silent about how many sub parts are created from Gat No.260. Application is not filed to measure all sub parts of Gat No.260. Thus, application is not tenable. He further asserted that the Deputy Superintendent of Land Record is not authorised to carry out measurement. The application deserves to be rejected. Hence, he has prayed to reject the said application.

4] Heard both sides at length. Perused the documents on record. There is the boundary dispute between the parties. The plaintiff submitted Gat No.260 is sub divided in 10 parts. Perusal of application it is seen that the defendants have prayed for measurement of all sub divided parts. Hon'ble Bombay High Court in case of *Habibkhan S/O Inauttalakhan And Others Vs Waman S/O Govind Rathod And Others reported in 2012 (1) All M R 803* is held that disputes regarding boundaries can be best adjudicated by taking assistance of experts, on measurement who can express his opinion. No doubt, the dispute between the parties can be best adjudicated by the boundaries of the lands of the plaintiff and defendants are fixed by expert. I do not find force and substance that the application is filed for collection of evidence. Therefore, considering the nature of the dispute between the parties it is just and proper to appoint the proper authority as court commissioner to measure the lands of the plaintiff and defendants jointly. Thus, in view of above observations, I proceed to pass the following order :-

ORDER

- 1 Application is allowed.
- 2 The Deputy Superintendent of Land Record, Barshi is directed to measure Gat No. 260/1, 260/2, 260/3, 260/4A, 260/4B, 260/5, 260/6, 260/7, 260/8A and 260/8B situated at village Turkapimpri, taluka Barshi and to fix the boundary marks of the lands of plaintiff and defendants.
- 3 Defendants are directed to deposit the requisite fee for

measurement in the office of Land Record, Barshi.

- 4 The defendants are directed to provide copies of plaint, written statement, 7x12 extracts of all aforementioned Gat Numbers and also directed to provide names and addresses of the adjacent land holders to this court within 15 days from the date of this order.

Date : 03/04/2018.

(B.S. Sankpal)
3rd Jt. Civil Judge, J.D. Barshi.

Certificate

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

Name of Stenographer : R.H.Lasane.

Court : 3rd JtCJJD & JMFC, Barshi.

Date: : 3/4/2018

Judgment/Order signed : 3/4/2018
by the presiding officer :

Judgment/Order : 04/4/2018
uploaded on :

