

ORDER BELOW EXHIBIT- 10 IN R.C.S.No.623 of 2012

Present application is filed by defendant Nos.1 & 2 under Order XXVI Rule 9 of C.P.C. for appointment of Court Commissioner to measure the land Gat Nos.92/1 & 92/2.

2. It is asserted that the the suit is for recovery of encroached land. Plaintiff has alleged that defendant Nos.1 to 3 have encroached 26 Are land of Gat No.91/1. However, the measurement on the basis of which the plaintiff has instituted the suit was faulty. It was not carried out as per the record of the adjacent land holders. Land Gat No.90, 91, 92, 93 94 and 95 belonging to the families of the plaintiff and the defendants have been divided in sub divisions. Joint measurement of those lands was not carried out. Possession of the plaintiff and the defendants over their respective lands is as it is since last several years and there is no change therein. In that view of the matter, land Gat No.93 is required to be measured to fix its boundaries. Dispute in respect of the encroachment cannot be adjudicated finally without measurement of their land. It is, therefore, to measure land gat Nos.92/1 and 92/2. Hence, the application.

3. Plaintiff has objected the application by filing his say. According to him, application is not tenable. Defendants are trying to protract the trial. Plaintiff has, therefore, prayed for rejecting the application.

4. Perused the record & proceeding. Heard both the sides. Only point which arises for consideration is : Whether defendant Nos.1 & 2 have made out a case to allow the application ?

5. At the outset, it must be stated that the suit is for recovery of possession. It is well settled that in the cases of boundary disputes and recovery of possession, the Court has to appoint a competent cadesteral surveyor as the court commissioner to prepare measurement map to set at rest the real controversy between the parties. It was held in the case of ***Habib Khan Vs. Waman Gaikwad 2012(1) ALL M.R. 803*** that the dispute regarding boundaries can be best adjudicated by taking the assistance of expert, such as, T.I.L.R.

6. Plainatiff and the defendants are the relatives of each other. They are having a common ancestor. As per the contents of the present application, land Gat Nos.90, 91, 92, 93, 94 and 95 belong to the Sawant family. Those lands are sub-divided. Joint measurement of those lands was not done. It is, thus, seen that the court commissioner can be appointed to measure land Gat Nos.90, 91, 92, 93, 94 and 95 to set at rest the real dispute. Thus, the prayer has to be modified to that extent. Nothing can be achive by meausrement of land Gat Nos.92/1 and 92/2 only without joint measurement of above noted lands. Hence, the order.

ORDER

1. Application is allowed.
2. T.I.L.R., Barshi is directed to measure land Gat Nos.90, 91, 92, 93, 94 and 95 along with sub-divisions situated at village Samgamner, Tq. Barshi and to fix the boundary marks of those lands and to show the encroachment, if any.

3. Defendant Nos.1 & 2 are directed to deposit the requisite fee for measurement in the office of T.I.L.R., Barshi.
4. They are further directed to provide a copy of the plaint, 7/12 extracts of Gat Nos.90, 91, 92, 93, 94 and 95 along with sub-divisions and present application to the T.I.L.R., Barshi.

Date : 18.04.2017.

(S.K. Khan)
Jt.Civil Judge (J.D.),
Barshi.

CERTIFICATE

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

Name of Stenographer	:	Bhaskar G.B.
Court Name	:	S.K.Khan, Jt.C.J.J.D.& J.M.F.C. Barshi
Date	:	18.04.2017
Order signed by the presiding officer on	:	18.04.2017
Order uploaded on	:	18.04.2017