

Order below Exh. No.13 in RCS No.515/2018

(Ganpat vs. Changdeo)

1) By this application plaintiffs are praying for appointment of Court Commission for the inspection, measurement and fixation of boundaries of lands

i) ad-measuring 1-20R at Gat No.50/3

ii) ad-measuring 1-20R at Gat No.50/2

iii) ad-measuring 1-20R at Gat No.50/1

situated at village Tandulwadi Tq. Madha, Dist. Solapur (hereinafter these lands will be referred as the suit property in this order for the sake of brevity).

2) It is contended by the plaintiffs that, they are absolute lawful owner and possessor of the suit property, in order to avoid any dispute with their adjacent land holders i.e. the defendants the suit property needs to be measured and fixed its boundaries. Hence, prayed to appoint Court Commissioner.

3) While defendants strongly objected this application by filing their say vide Exh.16. It was contended by them that, defendants are land holders of Gat No.51, they have no concern with Gat No.50, they have never obstructed the plaintiffs in the suit property, hence the plaintiffs have had no locus standi or reason to institute this suit, infact the plaintiffs could have approach to the appropriate authority in prescribed manners to get their lands measured. It is an act by the plaintiffs to create pressure on the defendants. Hence, prayed to reject this application.

4) Perused the application, say, documents filed on record. Heard both the sides.

5) This is the suit for measurement and fixation of boundaries. The plaintiffs contended that, they are lawful owner and possessor of the suit property, the defendants did not object ownership or possessor of the plaintiffs over the suit property, hence ownership and possessor of the suit property is not disputed in this case.

6) Now the second question, the plaintiffs could have approached before the competent authority to get the suit property measured rather than approaching the court. As per the copy of the application filed by plaintiff No.1 before Dy.L.R. Madha on 18.06.2014 to get the suit property measured, it show the plaintiffs took efforts to get the land measured by appropriate authority before reaching to the court. Dut to standing sugar-cane crop measurement could not be conducted. But I do not find substantial reason to reject this application. It is also fact that, spot inspection assists the court to understand the actual ground situation, where by perusing merely documents such actual ground situation cannot be understood clearly. Moreover, inspection by an independent authority does not harm or prejudice to either side, hence I do not find any reason for rejecting this application. In fact it may reduce further complication and multiplicity of litigation.

7) In view of Order XXVI Rule 9 of the Civil Procedure Code, the commission can be appointed for the local investigation in a suit in which it seems to be requisite and proper for the purpose of elucidating the matter in dispute. Considering the nature of this suit, if the inspection is conducted by

competent authority of Dy.L.R. it may assist better way to understand actual ground status. It cannot be called as collection of evidence on behalf of the plaintiff at the hands of Court. Hence, with this discussion, I find merit in the application and proceed to pass the order.

ORDER

- 1) Application is allowed.
- 2) The Dy.I.L.R Madha is hereby appointed as Commissioner to measure and fix the boundaries of the suit property and to submit the report.
- 3) Plaintiffs are directed to deposit the Court Commissioner fees to the concerned office on or before 30/03/2021.
- 4) Issue letter to Dy.I.L.R. Madha accordingly.

Date : 17/03/2021.

(M.S. Quazi)
3rd Joint C.J.J.D. Madha.

CERTIFICATE

I affirm that, the contents of this P.D.F. file Judgment/ Oder is same word to word as per the original order/judgment.

Name of Stenographer : H.J.Mane,

Court Name : Jt Civil Judge & J.M.F.C.,
Madha.

Judgment/Oder signed

by Presiding Officer on : 17/03/2021

Judgment/Order uploaded on: 18/03/2021