



R.C.S.No.1095/2022
Uddhav Vs. Subhash Etc.
CNRNOMHSO170037792022

ORDER BELOW EXH.05

This is an application by the plaintiffs for appointment of court commissioner under Order 26, Rule 9 of the Code of Civil Procedure, 1908 (In short the **"CPC"**) for carrying out measurement of land in original Gat Nos. 208, 209, 211, 212, 213 and 214 situated at village Lavhe, Tal.Madha, Dist.Solapur (In short the **"Suit property"**) and all adjacent Lands therein for ascertaining exact boundaries and location.

02] According to the plaintiffs, they are owners and possessor of the suit properties. The defendants fields are adjacent to the suit properties. They have made an encroachment over the same. Hence, they pray for appointment of court commissioner for ascertaining exact area, boundary and location of the suit properties.

03] The suit is ex-parte and written statement against defendants.

04] Record shows that the suit is for measurement and fixation of boundaries. It is alleged that defendants whose lands are adjacent to the suit properties have made encroachment over the same and therefore there arose a dispute of location and boundaries. As such, real dispute in the suit is about alleged encroachment, location and boundaries. In such situation, law is well settled that such dispute cannot be agitated unless there has been a measurement through an expert. It is also an acknowledged principle of law that in a suit for removal of an encroachment and possession, appointment of court commissioner is necessary so as to decide the lis on merit. Therefore, the measurement of the suit properties as well as lands of defendants by T.I.L.R., Madha will be helpful in elucidating the matter in dispute. Hence, following order :-

:: ORDER ::

01. The application is allowed.
02. The T.I.L.R., Madha is appointed as court commissioner and directed to measure the entire land in original Gat Nos. 208, 209, 211, 212, 213 and 214 situated at village Lavhe, Tal.Madha, Dist.Solapur
03. The TILR, is directed to conduct the measurement of suit properties, above lands of plaintiffs as well as all other adjacent fields, if necessary, and specify their exact area, boundaries of the respective parties, extents, location and description of an encroachment, if any, at the hands of defendants or others.
04. The T.I.L.R., shall submit the map along with its report of measurement to this court within **three months** from the date of receipt of this order.
05. The parties to co-operate with the T.I.L.R., Madha, for completion of the commissioner duty.
06. The said measurement be carried out by giving prior notices to the all concerned parties, as per rules.
07. The plaintiffs to bear the charges of measurement and he shall deposit the necessary charges to the office of T.I.L.R., Madha, as earliest.
08. Issue commissioner writ accordingly.

Date :- 18/09/2024
Place :- Madha.

(Y.S.Akhare)
Jt.Civil Judge Jr. Division, Madha.

CERTIFICATE

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

Name of Stenographer : Shri.P.S.Pawar, Grade - 3

Court Name : Jt. Civil Judge Jr. Division,
Madha.

Order/Judgment signed
by the Presiding Officer on : 18/09/2024

Order/Judgment uploaded on : 18/09/2024