

ORDER BELOW EXH.30

This is an application filed by defendant for directing the TILR, Madha for Nimtanan measurement against the measurement carried out by him as order of the Court. It is the contention of defendant No.1 that as per order of Court below Exh.11, the TILR was appointed with consent of both parties. Accordingly he has filed his report at Exh.24 along with the map. It is the contention of defendant No.1 the Court Commissioner did not make proper measurement as per rules. He did not carry the necessary amendment intentionally at the time of measurement. He has mentioned wrong four boundaries in the Court Commissioner report than the four boundaries mentioned in the plaint. There is difference in the four boundaries mentioned in the plaint and Court Commissioner report. He has carried the measurement on the basis of wrong information and prepared incorrect map. Hence, prayed to allow the application and prayed for Nimtana measurement.

2. The other side has objected the application on the ground that the measurement done by the Court Commissioner is legal and proper. The defendant was present on 13/06/2023 at the time of measurement and he has given his statement before Court Commissioner and also admitted the measurement done by the TILR. The defendant did not take any objection at the time of measurement. This application is filed after a period of 7 to 8 months of the Commissioners report filed in the Court. As in Court Commissioner report, the defendant is shown to be in excess possession than his land this application is filed by defendant. Hence, prayed to reject the application.

3. Heard the learned counsel for both sides.

4. Perused the record and report of Court Commissioner. The record of

Court Commissioner shows that the defendant was present on the spot at the time of measurement. As regards, the contention of learned counsel that four boundaries mentioned in the map and mentioned in the plaintiff did not match with each other i.e. of Gat No.21/2 is concerned, whether the four boundaries mentioned in the plaintiff of gat No. 21/2 are correct or whether four boundaries mentioned in the map prepared by TILR are correct has to be decided on merits, when he comes in Court to adduced his evidence, because TILR while visiting the spot used to take the record with him. Therefore, whether the measurement done by him is incorrect or not cannot be decided unless his evidence recorded in Court and unless how his measurement is illegal is brought on record, at this prima-facie stage, it cannot be said that the measurement done by him is illegal, incorrect and he has mentioned incorrect four boundaries in the map. Hence, I find no substance in the application and it is liable to be rejected. Hence, rejected.

Date : 11/10/2024

(G. V. Gandhe)
2nd Jt. Civil Judge, Jr. Dn., Madha.
(J.O. Code-02624)

CERTIFICATE

I affirmed that, the contents of this PDF file order are same word to word as per original order.

Name of Stenographer : A. A. Jadhav (Grade-3)

Court Name : Shri. G. V. Gandhe, 2nd Jt. C.J.J.D.
and J.M.F.C., Madha.

Order signed by P.O. : 11/10/2024

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