

ORDER BELOW EXH.11

This is an application filed by plaintiff for appointment of Taluka Inspector Land Revenue, Madha as Court Commissioner i.e. Cadastral surveyor under Order XXVI Rule 9 of the Civil Procedure Code.

2. The plaintiff has contended that the suit property is owned and possessed by him and it is situated adjacent to the Kurduwadi-Madha road. The defendant has no any right and concerned with the suit property. He has joining hands with revenue officers has got executed fake document and on the basis of it, has committed encroachment on 0.10 R land of the suit property and has constructed the house. Plaintiff demanded the possession of the encroached from him, however, he did not give it and therefore, this suit for removal of encroachment and for permanent injunction is filed by plaintiff. Hence, prayed to get measured the suit property through TILR, Madha and to fix boundaries of the suit property i.e. field Gat No. 470.

3. Defendant though served with summons did not appear in the matter and hence, the suit is proceeded ex-parte against him. Consequently, there is no say to this application on behalf of defendant.

4. Heard the learned counsel for plaintiff. He has placed on reliance of the Judgment of the Hon'ble Bombay High Court filed below list Exh.13.

5. Perused the plaint and this application. It is specific contention of the plaintiff that defendant has encroached on his 10 R land. The 7/12 extract of field Gat No. 470 shows the name of plaintiff as possessor. It is settled law that when there are allegations of encroachment and suit for encroachment, it is necessary to

have the agreed map on record of the measurement carried by the TILR. Moreover, I have also gone through the Judgment of the Hon'ble Bombay High Court in a case of *Sham Janardhan Choudhari Vs. Asha Ramdas Katkar, 2014(5) Mh.L.J.770* and *Kolhapuri Bandu Lakade Vs. Yallappa Chinappa Lakade and others, 2011(3) Mh.L.J. 348* and considered the ratio laid down by the Hon'ble Bombay High Court in above cited cases, while deciding the present application. Hence, the application is allowed as per following order :-

ORDER

- i) The application is hereby allowed.
- ii) The Taluka Inspector, Land Records, Madha is hereby appointed as the Court Commissioner to visit the suit property field Gat No.470, situated at Village Mouje Bhosare, Tq. Madha, Dist. Solapur and he is directed to measure above Gat number and shall prepared the map and show the encroachment if any on the suit property, after giving notice in writing to defendant and all adjoining land owners, their Advocates regarding day and time of his visit for commission work to the suit property and asking them to remain present at the time of commission work at the suit property.
- iii) All parties are directed to appear before the Commissioner accordingly.
- iv) The Court Commissioner is directed to visit the suit property to measure the Gat No. 470 and after carrying measurement and to verify that whether there is encroachment, if any and if there is any encroachment shall specify the same in the measurement map

and shall also mentioned who has encroached on whose land and shall also specify the correct situation of the said Gat number.

- v) The Court Commissioner is directed to submit his report as to his visit and local investigation on or before **03/02/2025**.
- vi) The plaintiff is directed to deposit necessary charges with the Taluka Inspector, Land Revenue, Madha on or before **09/12/2024** and shall file copy of payment of receipt in the Court on **09/12/2024 or before that**.
- vii) The plaintiff is directed to supply the additional copy of plaint and other essential documents to the Court for forwarding it to the Taluka Inspector, Land Revenue, Madha.
- viii) Parties shall assist the Commissioner and produce the necessary documents before him.
- ix) The concerned Clerk is directed to issue the Commissioner Writ after payment of necessary charges by plaintiff in the concerned office.

Date : 29/11/2024

(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. : 29/11/2024
Order uploaded on : 30/11/2024