

Order below Exh.17 in Reg.Civil Appeal No.196 of 2016.

1. By this application the appellants pray for the measurement of the sub divisions of Gat No. 329 Mouje Bhoose, Tal. Koregaon, Dist. Satara through D.I.L.R. under Order XXVI Rule 9 of the Civil Procedure Code.

2. As per the submissions of the appellants, Reg.Civil Suit No.100 of 2005 filed by the respondents for the removal of encroachment of 30 gunthas over their land Gat No.329/2. The same has been decreed by the Civil Judge Jr. Dn. Koregaon.The appellants are the owner of Gat No.329/23. While ascertaining the factum of encroachment only Gat No.329/2 and 329/3 measured by the surveyor. However, unless all the sub divisions of Gat No. 329 are measured and the boundaries are fixed encroachment cannot be ascertained. Therefore, he prays for appointment of Court Commisisoner for the measurement of the sub divisions of Gat No.329.

3. The same has been strongly opposed by the respondents by filing reply at Exh.20 inter alias contending that Gat No.329/2 and Gat No.329/3 are measured twice. The measurement map duly proved by the respondents before the Trial Court. The surveyor was not cross examined by the appellants. Once the encroachment of the appellants is proved, there is no reason to re-measured the property in question. No situation arise to re-open the said facts. Therefore, it is submitted to reject the application with costs.

4. Heard the learned advocate J.B.Yevale for the appellants and the learned advocate A.D.Bhutkar for the respondents. Both of them argued in the light of their respective contentions.

5. The learned advocate for the appellant in support of his submissions about the appointment of court commissioner for measurement of entire

Gat No. 329 placed reliance on the rulings:

- (i) Haryana Waqf Board Vs. Shanti Sarup,
Reported in AIR 2008 SC 516
- (ii) Kashinath Chindhuji Shastri Vs. Baribhau Nathuji Bawanthade ,
Reported in 2004 (2)Mh.L.J.722.

6. As per the propositions of law laid down by the Hon'ble Apex Court and a High Court is that where there is a dispute about the encroachment, the Commissioner must be appointed to prepare the map of measurement of the property in question. The Cadestral Surveyor should be appointed by the Trial Court for taking joint measurement of the properties owned by the respective parties. If the trial court did not appoint the Commissioner under O.XXVI Rule 9 of the C.P.C. the Appellate Court should appoint the Court Commissioer for the purpose of demarcation of the suit lands.

7. In the light of the settled proposition of law, on making inquiry with the learned advocate for the appellants, whether he is ready to measure entire four sub divisions of Gat No.329 of Mouje Bhoose, to which he agreed. Also, in order to stop further litigations between the parties on the said measurements, asked the learned advocate for the appellants whether he is ready to abide by the measurements if permitted to be carried out by the Cadestral sSurveyor. The learned advocate for the appellants by passing the pursis on record at Exh.23 submitted that the decision of the Cadestral Surveyor will obey by the appellants and he is ready to withdraw the appeal if anything adverse noticed on the point of the encroachment.

8. The pursis filed by the appellant is accepted by the other side. Therefore to resolve the dispute between the parties once for all, according to me the application for appointment of the Court Commissioner for the measurement of the entire Gat No. 329 deserves to be allowed. Hence, the

following order.

Order

1. The application for appointment of Court Commissioner filed under Order XXVI Rule 9 of the C.P.C. is hereby allowed.
2. The Officer of T.I.L.R. Koregaon, Dist. Satara is hereby appointed as Commissioner for the measurement of four sub divisions of Gat No.329 of Mouje Bhose, Tal. Koregaon, Dist. Satara.
3. The appellants shall bear all the expenses of measurement of the land Gat No.329 owned by the respective parties.
4. The appellants are directed to furnish the relevant documents to the T.I.L.R. Authority and also deposit the necessary charges and submit the compliance report before this Court on the next date without fail.
5. The T.I.L.R. is directed to furnish the measurement map with his report before this Court on or before two months from today without fail.
6. Issue the writ about the appointment of Court Commissioner accordingly.

Satara.
Date:19-01-2018.

(D.A.Dholakia)
District Judge-2, Satara.