

**ORDER BELOW EXH.19 IN R.C.S. No.180/2014**

1. This is an application made by the plaintiffs for appointment of a Court Commissioner for carrying out measurement of the suit property.

2. The plaintiffs have contended that the defendants have raised a construction by encroaching upon the suit property 1A. The defendants have denied existence of suit properties 1B to 1D. In order to find out the encroachment at the hands of defendants, a local investigation by an expert is necessary.

3. The defendants have strongly opposed the application by their reply Exh.30. According to them, they have not committed any sort of encroachment over the suit property. The plaintiffs are trying to collect evidence by assistance of the Court. On these and other grounds, the defendants have prayed for rejection of the application.

4. Heard Shri.A.R.Janugade, learned Advocate for the plaintiffs and Shri.B.B.Jadhav, learned Advocate for the defendants. Perused the entire record.

5. The learned Advocate for plaintiffs has placed reliance on the following case laws.

- i) *Yesabao Vs. Maroti, reported in 2004 (4) CCC 213 (Bom.).*
- ii) *Bhupendra s/o Bhagwat Turkar Vs. Homraj s/o Zituje Meshram, reported in 2014(4) Mh.L.J.231.*
- iii) *Malhar s/o Ganpat Bokerphod Vs. Shivaji s/o Vishwanath*

*Pawal reported in 2014(4) Mh.L.J.237.*

6. The present suit is for mandatory and perpetual injunction. According to plaintiffs, the defendants have raised construction by encroaching upon the suit property 1A. The encroached portion is described in para 1C of the plaint. Admittedly, the plaintiff No.2 had instituted a suit R.C.S.No. 100/1990 against the present defendants for mandatory injunction. The said suit was dismissed. The plaintiff No.2 had preferred an Appeal R.C.A.No.568/2000 against the judgment and decree in R.C.S.No.100/1990. The said Appeal was also dismissed.

7. The defendants have produced below list Exh.23, certified copies of plaint and judgment in R.C.S.No.100/1990 and judgment in R.C.A.No.568/2000. Perusal of the said documents shows that the plaintiff No.2 had claimed encroachment at the hands of defendants to the extent of 1.5 gunthas. The judgment in R.C.A.No.568/2000 discloses that a local investigation was carried out by a Court Commissioner in the original suit R.C.S.No.100/1990. However, none of the parties have produced copy of the said commission report in the present suit. The said commission report would have made clear the position in the previous suit R.C.S.No.100/1990. Be that as it may. Admittedly, the claim of plaintiff No.2 in respect of encroachment at the hands of defendants was dismissed right till the appellate Court.

8. Now, the plaintiff has instituted present suit again

alleging encroachment at the hands of defendants. The pleadings of plaintiffs in para Nos.4 and 5 of the plaint are vague in nature. The present suit is at a pre-trial stage. Issues are not yet framed. In the backdrop of the dismissal of claim of plaintiff No.2 in respect of alleged encroachment at the hands of defendants in R.C.S.No.100/1990 and at this pre-trial stage, it would not be proper to order a local investigation as prayed by the plaintiffs. The hearing in the suit is yet to commence. If in future, it would be necessary to order local investigation for the purpose of elucidating any matter in dispute, the plaintiffs can apply afresh. Thus, the application is liable to be rejected. Hence, Order.

**ORDER**

Application Exh.19 is rejected.

Patan  
Date:13/01/2016

( M.V.Phade )  
Jt. Civil Judge, Jr.Dn.Patan.