

<p>MHST160031842018</p> 	<p><u>ORDER BELOW EXH.49 IN REG.CIVIL</u> <u>SUIT NO. 195/2018</u></p> <p>(<u>Niranjan Sadashiv Kirloskar V/s.</u> <u>Anil Sadashiv Nanavare</u>)</p> <p>Order passed on 15.09.2023</p>
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This is an application filed by defendant no.1 under Order 26 Rule 9 of Civil Procedure Code 1908. The plaintiff filed this suit for recovery of possession of encroached portion and perpetual injunction.

2. Through this application defendant no.1 submitted that plaintiff claiming ownership right in suit property described in para 1a of plaint. Defendant No.1 is owner and possessor of survey no.661/1/6 which is adjacent to suit property. The survey no.661/1/6 situated towards east side of suit property. According to plaintiff defendant no.1 has encroached in suit property. But defendant no.1 in his written statement contended that there is no encroachment by him. Therefore defendant no.1 prayed for appointment of commissioner for joint measurement of properties of plaintiff and defendant.

3. According to plaintiff, it should come on record that there is encroachment by defendant or not. If it will come

on record then the suit will be adjudicated on merits. Therefore, he prayed for appointment of commissioner.

4. Per contra plaintiff in his say at Exh. 52, opposed the said application. He contended that the said prayer of the plaintiff is wrong and illegal. The suit is filing on 31.10.2018. Defendant no.1 has filed his written statement on 25.09.2019 at Exh.32. The defendant no.1 has filed this application after 5 years. There is no reason mentioned by defendant no.1 for said delay. It is also contended by plaintiff that fee of Court commissioner should be paid by defendant no.1. Hence, the application be rejected.

5. I heard the Ld. Advocate of the defendant and Ld. Advocate of the plaintiff. Perused the record of the case.

6. Ld. Advocate of defendant no.1 submitted that whether there is encroachment or not, decided only by joint measurement of suit property. Plaintiff did not deny the measurement. Therefore the application for appointment of court commissioner be allowed.

7. Per contra Ld. Advocate of plaintiff argued that the application filed after 5 years. The reason for delay did not mention by defendant no.1. Hence, the application be rejected.

8. It is seen that Order 26 Rule 9 of the Code of Civil Procedure 1908 provides that in any suit in which the court deems a local investigation to be requisite or proper of elucidating any matter in dispute the court may issue a commission to such person as it thinks fit.

9. This is the suit for recovery of possession of encroached portion and for perpetual injunction. Similarly, if the properties of plaintiff and defendant are jointly measured by TILR Wai then it is helpful to the court. It will assist the court to come proper decision. The factual position of the property will come on record. Hence, I pass following order:

ORDER

1. The application is allowed.
2. Taluka Superintendent of Land Records, Wai is appointed as court commissioner in this matter.
3. Taluka Superintendent of Land Records or a competent surveyor on his behalf shall visit survey no.661/1/6 at village Wai, Taluka Wai. He shall jointly measure land bearing survey no.661/1/6 in entirety. He shall show the respective areas.
4. The court commissioner shall prepare detail map and shall file the same in this matter without fail.

5. The court commissioner shall give prior notice to respective parties before carrying out the commission work.
6. The plaintiff shall pay necessary commission fees in the said office as per rules and shall report the deposit of amount to this court on next date.
7. Parties shall assist the court commissioner in the said commission work.
8. Issue commission letter accordingly.

Date-15.09.2023
Place-Wai

Smruti S. Kulkarni
4th Jt. Civil Judge Jr.Dn.Wai.