

**R.C.S. No. 259/2018
Banubai & Ors. Vs.
Shakuntala & Ors.**

ORDER BELOW EXH.17.

Read an application. No reply filed by defendants. Perused the record. Heard the learned counsel for plaintiffs Adv. Shri. D. L. Pawar. The learned counsel for defendants Adv. Shri. B. B. Phadtare are absent when called. Plaintiffs and defendants are also absent when called.

2. Plaintiffs filed this instant application under order XXVI, rule 9 of the Code of Civil Procedure to issue commission to make local investigation of the suit property. According to the plaintiff, plaintiffs are the owner of suit property i.e. agricultural land bearing S.No.169/3 field block No.1218, situated at Umbarde, Tal. Khatav, Dist. Satara. Defendants are the owner of field S.No.447 which is situated in the Eastern side of the suit property. Defendants encroached upon 5 Are land of the plaintiffs. Therefore, plaintiffs filed this suit for removal of encroachment of 5 Are land and its possession. Thereafter, the defendant No.1 to 3 filed the written statement at Exh. 13 and submitted that the plaintiffs encroached upon the agricultural land of defendants. Defendants denied the entire allegation of plaintiffs. There is no cause of action to plaintiffs to file the suit.

3. On perusal of plaint and written statement of

defendants, it appears that, it is the allegation of plaintiffs that defendants encroached upon the suit property. Defendants also submitted that plaintiffs encroached upon their agricultural land. Under these circumstances, it is necessary to make local investigation of the suit property. In view of this, I read rule 9 of Order XXVI of the Code of Civil Procedure. Rule 9 provides that, “in any suit in which the Court deems local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market value of any property or the amount of any mesne profits or damages of annual net profits, the Court may issue commission to such person as it thinks fit directing him to make such investigation and to report thereon to the Court. Provided that where the State Government has made rules as to the person to whom such commission shall be issued, the Court shall be bound by such rules.’

4. In this present suit, there is the question of encroachment on the part of plaintiffs as well as defendants. Therefore, in order to decide this suit on merit, commission is required to be issued to make local investigation of the suit property. I found substance in the application. Accordingly, I proceed to pass the following order.

ORDER

1. The application is allowed.

2. The commission be issued for making local investigation of the suit property as well as the agricultural land of defendants vide Rule 9 of Order XXVI of the Code of Civil Procedure.
3. The Taluka Inspector of Land Records or its subordinate officer be appointed as a Court Commissioner subject to condition that the plaintiff shall pay requisite fees as per rule in the office of the Taluka Inspector of Land Records.
4. After payment of requisite fees, the Commissioner is to make local investigation of suit property and defendant's property and to submit the report within three months in the Court.
5. Both the parties are directed to take note of it.

Vaduj
Date: 24.04.2023

(D.D. Fulzele)
Civil Judge Sr.Dn., Vaduj.