



**ORDER BELOW EXH.54 IN REGULAR CIVIL SUIT NO.125/2025**

The present application has been filed by the plaintiff for appointment of court commissioner under Order XXVI Rule 9 of the Code of Civil Procedure.

2. It is the contention of the plaintiff that, there is dispute regarding encroachment between the plaintiff and defendant No.5. Defendant No.5 had measured her property bearing Gat No.17/6. In the said measurement, it is shown that the plaintiff made encroachment in the property of defendant No.5. It is settled position of law that, when there is dispute relating to encroachment, then joint measurement is necessary for final adjudication of dispute. Therefore, he prayed that the application be allowed and court commissioner be appointed for measuring the suit property bearing Gat Nos.17/4, 17/5 and 17/6.

3. Defendant No.5 filed her say vide Exh.60 and strongly objected the present application. However, later on defendant No.5 had given no objection for measurement of the suit property by filing pursis vide Exh.67. Defendant No.5 contended that, the joint measurement of Gat Nos.17/5, 17/4, 17/9A and 17/6 is necessary for final adjudication of dispute between them. She sought permission for video recording of court commission work and no third party shall be allowed to be present during the commission work. She further asked for police aid during for commission work.

4. Defendant No.5 has no objection with respect to measurement of the suit property. The only dispute remains whether the measurement of whole survey No.17 has to be done or only the properties which are related to the plaintiff and defendant No.5 have to be measured. The Ld. advocate for the plaintiff placed his reliance on the authority of the Hon'ble Bombay High Court in the case of **Vijay Shrawan Shende Vs. State of Maharashtra, reported in LAWs (BOM)- 2009-5-57**. In said authority, the Hon'ble Bombay High Court has held that, 'if necessary, surrounding survey numbers can also be measured to decide as to whether the plea of encroachment made by the plaintiff is factually correct'. He further placed his reliance on the authority of the Hon'ble Bombay High Court in the case of **Deepak s/o. Eknath Todkar Vs. Dr. Bhanuprakash Bapurao Kadam, reported in Second Appeal 755 of 2017**. In the said authority also, the Hon'ble Bombay High Court has directed to measure the entire survey number for determination of encroachment. He further placed his reliance on the authority of the Hon'ble Bombay High Court in the case of **Madhukar R. Javle Vs. Baskar Ramnath Shibad, reported in AIR 1996 Bombay 96**. In the said authority, the Hon'ble Bombay High Court has held that, 'the Court can direct inspection of property even though it is not a subject matter of the suit. Upon meticulous reading of the authorities cited supra, I am of opinion that the facts in those authorities are altogether different than the case in hand. Therefore, with respect to authorities cited supra, I am of opinion that those are not applicable to the case in hand.

5. The plaintiff as well as defendant No.5 filed on record the map of Gat No.17. Upon perusal of the said map, it appears that it is

already sub-divided into 18 parts. The dispute between the plaintiff and defendant No.5 is with respect to Gat Nos.17/4, 17/5 and 17/6. Defendant No.5 asked for measurement of Gat No.17/9A which is owned by the plaintiff and it is adjacent to the suit properties. When sub-division is made in the gat number, then there must be a Phalani map (फालणी नकाशा). Therefore, instead of the measurement of whole survey number, only the property of the plaintiff and defendant No.5 can be measured on the basis of boundaries by fixing the points. Therefore, the argument made by Ld. advocate for the plaintiff for measurement of whole Gat No.17 cannot be accepted.

6. Defendant No.5 put forth certain threats on the basis of the earlier incident occurred while fixation of the boundaries of her property. Considering the threats of defendant No.5, the strict conditions can be imposed on the plaintiff as well as defendant No.5. Therefore, I am of opinion that the present application deserves to be allowed. Hence, I pass the following order :

### **ORDER**

- (1) Application (Exh.54) is allowed.
- (2) The Deputy Superintendent of Land Records, Mahabaleshwar is hereby appointed as Court Commissioner for measurement of suit property bearing Gat Nos.17/4, 17/5, 17/6 and 17/9A.
- (3) The court commissioner is directed to measure the properties bearing Gat Nos.17/4, 17/5, 17/6 and 17/9A, prepare a map and filed his report within 60 days from

the date of this order.

- (4) The court commissioner shall fix the boundaries after the measurement is completed as per survey manual.
- (5) The plaintiff and defendant No.5 are hereby directed that no third party, except which are related with the measurement work and adjacent land holders, shall be present during the commission work.
- (6) The plaintiff shall ensure that no political person or member of political party will be present during the commission work.
- (7) Both the parties are at liberty to record the commission work by video camera.
- (8) The plaintiff shall pay the cost of measurement directly to the concerned department within 10 days from the date of this order alongwith necessary documents.

Date: 03.10.2025  
Wai.

(A. A. Pacharne)  
Jt. Civil Judge, Sr. Division,  
Wai.