

**ORDER BELOW EXHIBIT -10**

1. The plaintiff has filed this application under Order 26 Rule 9 of the Code of Civil Procedure, for the appointment of Court Commissioner for joint measurement of Plot No. 8 of Layout in Field No. 139/2 and 1/4<sup>th</sup> of Plot no. 26 of Layout in Field no. 139/1, situated within jurisdiction of Gram Panchayat Bhalewadi, Tah. Karanja, Distt. Wardha, through D. S. L. R.

2. The Learned counsel for the plaintiff Adv. A. S. Dharskar has submitted as contended in the application. The defendant has encroached on the land owner by the plaintiff and claiming that the land belongs to her. As the suit is for possession by removal of encroachment on the suit land, it would be proer to measure both lands jointly. No prejudice would cause to the other side, if the application is allowed. He relied on :

Kashinath Chindhuji Shastri vs. Haribhau Nathuji  
Bawanthade 2004 (2) Mh. L. J. 722

3. Per contra, the Learned counsel for the defendant Adv. D. M. Dhande has submitted as per reply. He submitted that the application is made only to prolong the matter and to fill up the lacuna. The court commissioner cannot be appointed to help plaintiff to collect evidence. He prayed for

rejection of the application. He relied on :

Sanjay Namdeo Khandare v. Sahebrao Kacharu  
Khandare 2001 (2) Mh. L. J. 959

4. I have gone through contention of both parties. I have considered argument advanced by both parties and citation relied by them.

5. In *Sanjay Namdeo Khandare v. Sahebrao Kacharu Khandare 2001 (2) Mh. L. J. 959*, wherein the trial Court appointed court commissioner for local investigation and to submit report as to actual possession over the suit property. The Hon'ble Court has held that, "It would be tantamount to appoint court commissioner to collect evidence regarding possession and therefore court commissioner cannot be appointed to record finding as to possession."

6. In *Kashinath Chindhuji Shastri vs. Haribhau Nathuji Bawanthade 2004 (2) Mh. L. J. 722*, the Hon'ble Court has observed that, "Where there is dispute about an encroachment or dimension of a site, the first essential is to get an agreed map and if the parties cannot agree on one, a commissioner must be appointed to prepare the same and/or subsequent reference in the pleadings or judgment to place the mark on a map should be referred to this map

which must be attached to the decree and signed by the Judge. In the absence of such a map, the decree is probably meaningless and execution means virtually starting the case overall again."

7. The plaintiff has filed the present suit for possession. The plaintiff's case is that, he has purchased Plot No. 8 admeasuring area 2250 Sq. Ft. of the Sanction Layout of the Field Land No. 139/02 within Gram Panchayat Bhalewadi. When he wished to construct house on that land he came to know that the defendant has constructed house at 650-700 Sq. Ft. Land owned by him. In spite of request and notice, the defendant has not removed encroachment on land owned by him. Therefore he has constrained to institute suit.

8. On the other hand, the defendant has denied that she has encroached on the land of the plaintiff. She came with the case that the plot No, 26 of Sanction Layout of the Field No. 139/1 was originally owned by one Krishna Ganpatrao Amle. Out of that eastern side land admeasuring are 50 x 26 sq. m. has been purchased by Ajabrao Tulsiram Pathe. After intermediate owners, the defendant and one Manohar Nanaji Dharpure has purchased that 50 x 26 sq. m land from one Vaishali Jivan Bhasme. After partition, the

defendant has got 60.41 sq. m. Land towards Western side. That Manohar Nanaji Dharpure has got Eastern side land of Plot No. 24 admeasuring 60.41 sq. m., which he sold to one Ratnamala Chandrashekhar Barange. After getting required sanction from Gram Panchayat, Bhalewadi, the defendant has constructed house on plot owned by her. Therefore, she has no nexus with the land owned by the plaintiff and her land is different from plaintiff's land.

9. From contention of both parties, it appears that both the plaintiff and the defendant are claiming ownership over the disputed land. Therefore, parties are at dispute in respect of same land. Therefore, measurement of the land of Plot No. 8 of Sanctioned Layout in Field No. 139/2 owned by the plaintiff and 1/4<sup>th</sup> of Plot no. 26 of Sanctioned Layout in Field no. 139/1 owned by the defendant, situated within jurisdiction of Gram Panchayat Bhalewadi, Tah. Karanja, Distt. Wardha is necessary for proper adjudication of real controversy in the suit effectively. The present case is regarding encroachment of land. Therefore, there is no question of assisting the plaintiff to collect evidence of disputed factum of possession. Therefore, the facts of *Sanjay Khandare's* case is not applicable to case in hand. In view of the above ruling of *Kashinath Shastri*, without measurement of the land of the plaintiff and the defendant, the case

cannot be decided effectively. Hence I pass the following order:

**Order**

1. The application is allowed.
2. The D.S.L.R. Karanja is appointed as Court Commissioner for joint measurement of the Plot No. 8 of Sanctioned Layout in Field No. 139/2 owned by the plaintiff and 1/4<sup>th</sup> of Plot no. 26 of Sanctioned Layout in Field no. 139/1 owned by the defendant, situated within jurisdiction of Gram Panchayat Bhalewadi, Tah. Karanja, Distt. Wardha .
3. D.S.L.R. Karanja is further directed to measure above mentioned Plots jointly and submit his report of joint measurement as to whether there is any encroachment alongwith the map, at the earliest.
4. The plaintiff to bear the charges of measurement.
5. Both the parties are directed to supply necessary documents to the Court Commissioner.

6. Writ be issued to the D.S. L.R. Karanja.

7. Both parties to take note of the order.

Date. 02.7.2020

{ Manjusha M. Alone }  
Civil Judge Junior Division  
Karanja (Gh.)