

R.C.S. NO. 32/2004

Prabhakar Vs. Shankar & ors.

ORDER BELOW EXH. 136 IN R.C.S. NO. 32/2004

(Prabhakar Jairamji Dharpure Vs. Shankar Pandurang Anjekar
(deceased) through LR's & ors.)

1. This is an application moved by the plaintiff seeking appointment of Court Commissioner for local investigation as per Order XXVI Rule 9 of Civil Procedure Code.
2. Plaintiff has contended that, the open space A and B area 412 square feet shown in measurement map Exh. No. 78 is the property owned by him and the defendant No.2 has encroached upon said property. It is further contended that, the Hon'ble High Court by setting aside orders passed in R.C.S. No. 32/2004 and R.C.A. No. 59/2012 has given fresh direction for measurement of the property of the plaintiff and defendants. It is further submitted that, the measurement is not yet carried out and accordingly the plaintiff has prayed to appoint the Court commissioner for measurement of the disputed property.
3. The defendant No. 2 has filed say and opposed the application, contended that, the matter is remanded back only for the purpose of measurement but the plaintiff started illegal construction over the open space A and B area 412 square feet and accordingly temporary injunction application was moved by defendants which was allowed and the plaintiff was restrained from carrying out construction over the disputed property. It is further contended that, in present matter already measurement is done,

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report is filed on record. It is further contended that, the defendant No.2 is in exclusive possession, the suit of plaintiff is been dismissed, the evidence on record is not discarded by the Hon'ble High Court and even though plaintiff is trying to change the record of Grampanchayat Kajali. Considering all above aspects she prayed for rejection of application.

4. Perused the record. Heard the Ld. advocate for the parties.

5. Initially, the suit was filed by the plaintiff against Shankar Pandurang Anjekar and Grampanchayat, Kajali. Thereafter, the defendant No.1 Shankar has died and his legal heirs are impleaded as defendant No.1 & 2. Record shows that, the suit was filed for declaration and possession. Further, record shows that, as per judgment and decree Exh. 104 & 105, the suit was dismissed. Thereafter, the original plaintiff had filed an R.C.A. No. 59/2012 and said appeal was dismissed. Further, record shows that, plaintiff has preferred Second Appeal No. 462/2017 and Hon'ble Bombay High Court in said appeal has set aside the judgment of Trial court and Appellate Court and matter is remanded back for fresh measurement of suit property and hence, present suit is before this court. Wherein, the plaintiff has moved the present application for appointment of court commissioner for measurement of suit property i.e. Grampanchayat house property No. 172 situated at village Kajali, Tq. Karanja (Gha.), Dist. Wardha.

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6. From the record, it is evident that, plaintiff alongwith the plaintiff has filed the measurement map wherein the encroached portion is shown as A & B total area admeasuring 412 square feet and said area is the disputed property. Further, record shows that, in the present matter as per order passed below Exh.111 the Court commissioner was appointed for joint measurement of property owned by the plaintiff and defendant No.1 situated within jurisdiction of Grampanchayat Kajali. Further, it is evident that, as per order below Exh.111 the concern office was directed to do needful and the concern office by way of letter dated 25/05/2022 has reported that, as city survey scheme is not implemented in village Kajali, so it is not possible to measure the house property of parties. Thereafter, the plaintiff has moved the present application.

7. After going through the report dated 25/05/2022, it reveals that, the concern TILR office has specifically contended that, for want of city survey scheme the Grampanchayat property could not be measured and encroachment can not be ascertained. Further, said report also shows that, the measurement can be done as per the possession but the encroachment can not be pointed out.

8. The present suit is for declaration of ownership and for possession of encroach portion. It is not disputed between the parties that, towards the western side of Grampanchayat house property No. 172 there is a vacant area and thereafter the house of defendant. The vacant area shown as A & B in the sketch map admeasuring 412

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square feet is the disputed land. Both the parties are claiming ownership over said land and so considering the rival contentions of the parties for complete adjudication of the dispute the measurement of the properties of both the parties is necessary. As per report dated 25/05/2022 measurement can be done as per the possession of the parties.

9. It is settled that to resolve the boundary dispute an expert has to be appointed as a court commissioner. Considering the above peculiar facts and circumstances of case I hold that in the present matter measurement of the suit property is necessary to resolve the dispute between the parties. So for final adjudication of controversy between the parties it is just and necessary to appoint Court commissioner to cause joint measurement of suit property and defendants property. Considering the above facts and circumstances of the case following order is passed.

ORDER

1. Application is allowed.
2. The Taluka Inspector Land Record (TILR) Karanja (Gha.) is hereby appointed as Court Commissioner to cause measurement of plaintiff property i.e. old Grampanchayat house No. 172 situated at village Kajali, Tal. Karanja (Gha.), Dist. Wardha.
3. The Taluka Inspector Land Record (TILR) Karanja (Gha.) is also directed to cause measurement of the defendant No.2 property which is situated towards the western side of plaintiff's property.

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4. TILR is hereby directed to cause joint measurement and fix the boundaries of above property and prepare map accordingly.
5. TILR is further directed to point out the exact area in possession of plaintiff and defendant No.2, also directed that whether any party possesses excess land more than the land standing in their name in the concern record.
6. The plaintiff is hereby directed to pay the necessary commission fee directly in the office of TILR.
7. Both the parties are directed to furnish the necessary documents towards the concern office.
8. Concerned Clerk is hereby directed to issue commission writ accordingly.

Date:- 26/09/2023.

(V.S. Wagh)
Civil Judge, Jr.Dn., Karanja (Gha.)
Dist. Wardha.