



**ORDER BELOW EXH. 30**

(Passed on 18<sup>th</sup> of July 2023)

1] The plaintiff has filed a present application for calling the corrected report of the Court Commissioner dated 25/11/2022 from the concerned office of the Land Revenue Records, Manora. Say filed by the defendant No.1 to 4 at the back of the application. Heard learned advocate for the plaintiff and defendant. Also perused the record and documents.

2] In short, it is the contention of the plaintiff that, he has filed a suit for removal of encroachment and possession. As per the prayer of the plaintiff vide application Exh.25 Ld. Court called the joint measurement report of the Gat No.661. Moreover, the said report filed by the Court Commissioner is vague in nature. Same does not disclose the actual report of the measurement. The said report is not helpful while deciding the matter in dispute.

3] It is the further contention of the plaintiff that, while measurement the small walking road admeasuring 0.18 have been shown at the South side of the Gat No.661. The said road is not shown as per the tipan document, same has not been shown in the plaint map. Therefore, it is not understandable as to how the said road came in measurement. As per the record the area admeasuring 8H 14R belongs to the plaintiff, whereas the said report shown the

possession of the plaintiff to the extent of area 7H 13R only. However, the possession of the remaining portion of the plaintiff has not been mentioned. However, the measurer further shown the area of the Ajay Rathod and Vijay Rathod to the extent of 0.66R and 0.34 R which is more than the area as described on record. However, the direction of the said area and the details of the alleged road is also not mentioned. The contentions as submitted supra is essential to be brought on the record to decide the controversy between the parties. The report of the same can be given by the office of Land Records only. Therefore, the plaintiff prayed that his application be allowed.

**4]** The defendant No. 1 to 3 opposed the application and submitted that, at the time of measurement by Surveyor plaintiff was present. But, she did not take objection at that time. As per the provisions of Evidence Act the report of Court Commissioner is not binding on the parties. There is no provision to rectify the report of the Court Commissioner. The application is not legally tenable. The Court Commissioner is independent person and he has no interest in the suit. Therefore, he has prayed for rejection of the application.

**5]** The defendant No.4 also objected the application submitted that, as per the application Exh.25 of the plaintiff Court Commissioner appointed by the Court. Accordingly, the alleged measurement was carried and map prepared thereon. At the time of measurement plaintiff was also present. Despite the fact she did not raised her objection. The plaintiff filed the present application only to

collect the evidence on record. Therefore, he has prayed for rejection of the application with costs.

**6]** I have gone through the rival submissions of both sides. I have also perused the documents placed on record in support of their respective contention. Following points arose for my determination. I record my findings for the reasons given below.

<b>No.</b>	<b><u>Points</u></b>		<b><u>Findings</u></b>
<b>1</b>	Whether the further corrected report from the Court Commissioner is required to be called with respect to measurement conducted dated .. 25/11/2022 ?	..	<b>No</b>
<b>2</b>	What order ?	..	<b>As per final order</b>

### **REASONS**

#### **As to Point No. 1 -**

**7]** Read the plaint & written statement. Also perused the report Exh.29 filed alongwith the measurement map prepared on 25/11/2022 by the concerned Court Commissioner. On the perusal of plaint it appears that, the suit is filed for possession, eviction and mesne profit. The controversy is revolving around whether the defendant has illegally encroached upon the portion of the suit property as alleged by the plaintiff.

**8]** Order 26 Rule 9 of the C.P.C. provides for commissions to make local investigation for the purpose of elucidating any matter in dispute or for ascertaining the market value of any property, or amount of any mesne profit or damages or annual net profits etc. It is settled position of law that commissioner can not be appointed for the purpose collection of evidence. The parties who would able to adduce evidence before the Court, can not be allowed to collect the evidence with the help of Court commissioner.

**9]** However, further perusal of the record discloses that the concerned Court Commissioner filed his report as per the order of my Ld. Predecessor below Exh.25 dated 17/09/2022. Despite the fact the plaintiff further want to call the corrected report from the Court Commissioner for the reasons stated supra. There does not appear a need for further calling the corrected report from the Court Commissioner. Therefore, considering the facts, circumstances and nature of the case the prayer of the plaintiff cannot be allowed at this juncture. Hence, I answer point No. 1 in negative and in answer to point No. 2, I pass the following order.

**ORDER**

1. Application Exh.30 is rejected
2. Costs in main cause.

(Dictated and pronounced in the open court)

Date- 18/07/2023

(Ms. T. G. Bansod)  
Joint Civil Judge(Jr.Dn.), Manora

**CERTIFICATE**

I affirm that the contents of this PDF file Judgment/Order are same word to word as per the original Judgment/Order.

Name of the Stenographer	-	Smt. R. K. Chavhan (Steno- L.G.)
Court	-	Jt. CJJD & JMFC, Manora
Date of Judgment/Order	-	18/07/2023
Judgment/Order signed by the Presiding Officer on	-	18/07/2023
Judgment/Order uploaded on	-	11/08/2023