

MHWS100000062016 	<u>ORDER BELOW EXH.14 IN RCS NO.1/2016</u> Vitthalrao Tukaram Deshmukh Vs Punjabrao Rangrao Deshmukh Passed on 01st August , 2024
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01] The plaintiff by way of this application craves to appoint Taluka Inspector of Land Records, Malegaon as court commissioner for the measurement of Gat Nos.259 and 260.

02] Suit bearing RCS No.1/2016 is instituted claiming relief of mandatory injunction, fixation of boundaries and permanent injunction in respect of land bounded as :

Towards East : Field of Indirabai Kundalikrao
Deshmukh out of Gat No 260.
Towards West : Field of Indirabai Kundalikrao
Deshmukh out of Gat No 259
Towards South : Field of Shesherao.
Towards North : Field of Ramesh Kacholiya.

hereinafter referred to as the “*suit property*”.

03] The plaintiff has purchased 2H 2R land out of Gat No.259 from defendant. Defendant has sold 61R land to MSEDCL Ltd. Washim. Now, the plaintiff is owner of the 1H 41R land out of Gat No.259. Thereafter, plaintiff has purchased the 48R land out of Gat No.260. The plaintiff is owner of land 1H 89R out of Gat Nos.259 and 260. Defendant is making obstruction with it's contention that he is having land on Gat No.259 and 260. There was compromise between plaintiff and defendant that 5 acre land is belong to plaintiff and 80R land is belong to defendant. Plaintiff has executed one agreement to sale in favour of MSEDCL Ltd. Washim. It was also agreed that defendant has no concern with the land of 0.48 R land. Plaintiff was ready to measure the land but defendant has

denied to the same. In the previous measurement it was found that plaintiff is found in possession of the land out of Gat No.260 more than the sale deed. In fact defendant can not claim title more than 0.80 R land. Plaintiff was ready to pay amount if the land out of the possession of 0.80 R land has been given to the MSEDCL Washim. Hence, this suit.

04] The defendant has not filed say to this application. Hence application is proceeded without say.

05] Heard Shri V. R. Lahoti learned Advocate for plaintiff. Following points arise for my determination and my findings are recorded thereon for the reasons ensuing :-

SNO.	POINTS	FINDINGS
1	Whether the appointment of commissioner for the measurement of suit plot is requisite or proper for the purpose of elucidating the matter in dispute?	Yes.
2	If yes, who amongst plaintiff and defendant shall bear the expenses for local inspection ?	The plaintiff will bear the expenses.
3	What order ?	Application is allowed.

REASONS

AS TO POINT NO.1:-

06] In the instant case, the pleadings of both the parties reveal that there is a dispute regarding boundaries. The plaintiff is claiming a land as per the sale deed executed in his favour. The plaintiff has purchased the 2 H 2R land from the defendant and sold the 61 R land to the MSEDCL. It is the contention of the plaintiff that as per agreement the defendant is entitled to the land 0.80 R land out of Gat No.259. 0.48 R land of plaintiff is out of Gat No 260 also. According to the sale deed, the remaining land in gat No. 259 is 3 H 61 R. Out of which, the defendant

is having only the share of 0.80 R land and remaining land is belong to his brother Ajabrao.

07] At this juncture, a valuable reference can be made to the Judgment of the Hon'ble Bombay High Court in **Habibkhan s/o Inauttalakhan Vs. Govind Rathod, Reported In 2012(1)ALL MR 803**, wherein his Lordships have observed that :-

“when the dispute is regarding boundaries or encroachment the same can be best adjudicated by taking assistance of the experts such as T.I.L.R. etc.”

08] Keeping in mind the aforesaid observations, it is to be noted at the cost of repetition that the present case is in fact based upon the allegations of encroachment. Therefore, in my view for effective and better adjudication of the matter, this stage is not too late as evidence is yet to be adduced. Thus, in my opinion the measurement of the lands of both the plaintiff and defendant is requisite and proper for the purpose of elucidating the matter in dispute. The suit is for mandatory injunction, for direction to fix the boundary marks and to act as per compromise. At this juncture, it is proper measure the Gat Nos.259 and 260. The issue of whether the area from his possession sold to the MSEDCL and remaining land shall resolve after the measurement. Suit land is comprising of land out of Gat Nos.259 and 260. Hence, I have answered the point no.1 in the affirmative.

AS TO POINT NO.2 :-

09] The plaintiff has prayed for measurement. According to Order XXVI Rule 15 the expenses for the commissioner be paid by the party at whose instance the commissioner is issued or for whose benefit it is issued. In the instance case, the issuance of commissioner is in fact

benefited to both the parties. However, plaintiff has made this application. Hence, I am of the view that plaintiff should be directed to pay the expenses of the commissioner. Therefore, in my view, the expenses incurred for the measurement will have to be borne by the plaintiff i.e. applicant. In view of my findings to point No.2 the application deserves to be allowed. Hence, I pass the following order :-

ORDER

- (1) The Deputy Superintendent of Land Record, Malegaon is hereby appointed as court commissioner to measure the land in Gat Nos.259 and 260 situated at Dongarkinhi.
- (2) The Deputy Superintendent Land Record, to measure the Gat Nos.259 and 260 at the earliest, in any case, prior to 20.10.2024.
- (3) The plaintiff is directed to deposit necessary expenses for the measurement of the Gat Nos.259 and 260 by the Deputy Superintendent Land Record, Malegaon within twelve days. The expenses of measurement shall be borne by the plaintiff irrespective of the decision of the suit.
- (4) Costs on applicant.
- (5) Issue commission letter accordingly.

Malegaon
Date : 01.08.2024.

[Pravin U. Kulkarni]
Jt. Civil Judge (JD) Malegaon
Dist. Washim.

<u>CERTIFICATE</u>		
I affirm that, contents of this PDF file is same word to word, as per original Order :-		
1. Name of the Stenographer	:-	Shivam B.Patange (LG)
2. Court Name	:-	Jt. CJJD & JMFC, Malegaon
3. Order dated	:-	01.08.2024
4. Order Signed by PO.	:-	12.08.2024
5. Order uploaded on	:-	12.08.2024