

Order below Exh.28(Passed on 01st September, 2018)

1. Instant application is moved by the plaintiffs for appointing the Court Commissioner from the T.I.L.R. Office, Darwaha, directing him to conduct measurement of plot nos. 253, 254 and 255 situated at mauje Talegaon, Tq. Darwaha, Dist. Yavatmal, and after measuring those plots submit measurement-sheet alongwith his Report, before the court. Learned Advocate for plaintiffs Shri R.D. Jadhav submitted that Plaintiffs/applicants have filed this suit for permanent as well as mandatory injunction. But defendants even after having knowledge of temporary injunction order in favour of plaintiffs and against the defendants, continued and completed their construction work over the encroached portion of plaintiffs plot. Therefore, now for getting the reliefs claimed in this suit, it has become necessary for plaintiffs to prove the encroachment made by defendants over the plaintiff's plot no. 255 and for that purpose it is necessary to make the measurement of plaintiff's plot no. 254 and 255 and defendants plot no. 253, so that Court will be in a position to direct the defendants to demolish their construction work made by encroaching over the northern side of plaintiff's plot no. 255. Therefore, Shri R.D. Jadhav further argued, considering all these facts, this application may kindly be allowed.

2. Learned Advocate for defendant no.1 and 2 Shri T. M. Khan by filing his say submitted that plaintiffs only want to measure plot no.

254 and 255 and without measuring plot no. 253 along-with plot no. 254 and 255, no any fruitful result will come. Therefore, plaintiffs may be directed to apply for getting the measurement of all the three plots. Hence, the instant application may kindly be rejected.

3. Perused the application and say filed thereon. Heard the learned Advocates of both the parties.

4. The present suit is filed by plaintiffs for permanent as well as mandatory injunction. It is the pleading of the plaintiffs that defendants have encroached upon plot no. 255, which is owned by plaintiffs, and made a construction thereon. Therefore, now plaintiffs want mandatory injunction against the defendants and consecutively permanent injunction over the said plot no. 255 against the defendants. On the other hand, it is the pleading of the defendants that they have not encroached upon any part of plaintiff's plot no. 255 and therefore, the question of mandatory as well as permanent injunction against them does not arise.

5. In the present suit, considering the above pleadings of both the parties, it appears that unless and until the alleged encroachment by defendants is proved by the plaintiffs, it is not possible to decide the fate of this suit. Furthermore, Without joint measurement all the three plots, encroachment cannot be ascertained. It is settled position of law that, for ascertaining encroachment, joint measurement of both the

fields or plots is essential. In the cases of encroachment on the plot or field, joint measurement is essential. Therefore, for elucidating the matter in dispute, joint measurement of all three plots is essential. Hence, I am of the view that, this is a fit case to appoint Commissioner by virtue of Order 26 Rule 9 of C.P.C., directing him to measure all the three plots, i.e., plot nos. 253, 254 and 255 situated at mauje Talegaon, Tq. Darwha, Dist. Yavatmal, and after measuring those plots submit measurement-sheet alongwith his Report, before the court. So far as the question of objection raised by defendants is concerned, it is pertinent to mention that, though plaintiffs have sought for measurement of only plot no. 255 in this application, they have filed a Pursis Exh. 29 and specifically stated that they want to measure all the three plots through T.I.L.R. Office. Hence, considering the discussion made above, I am of the view that the application below Exh.28 is to be allowed. Hence, I pass following order.

ORDER

- [1] Application below Exh.28 is allowed.
- [2] Taluka Inspector of Land Records, Darwha, is hereby appointed as Court Commissioner in the matter.
- [3] Taluka Inspector of Land Records, Darwha, shall conduct joint measurement of plot Nos. 253, 254 and

255 situated at mauje Talegaon, Tq. Darwha, Dist.
Yavatmal.

- [4] Court Commissioner, is directed to show the encroachment, if any, on the plot of plaintiffs.
- [5] Plaintiffs shall deposit the Commissioner fees directly to the office of Taluka Inspector of Land Records, Darwha, Dist. Yavatmal.
- [6] After payment of Commissioner Fees, issue Commissioner writ.

Date: 01.09.2018

(Prasad B. Joshi)
2nd Jt.Civil Judge (Jr.Dn.),
Darwha.