

Order below Exh. No. 91

The defendant has filed this application to measure the lands of plaintiff and defendant through Tahsildar, Ghatanji or Mandal Officer, Ghatanji by appointing them as a Court Commissioner vide order 26 Rule 9 of the Civil Procedure Code.

2. In short, the claim of the defendant is that, the plaintiff has filed suit against the defendant for recovery and possession of encroached land. The agricultural land bearing Gat No. 110 admeasuring 1 H. 49 R situated at Mauja Saikheda (Budruk), Dist. Yavatmal is belongs to the plaintiff. The land of defendant is adjacent to the land of plaintiff. The land of defendant is bearing Gat No.22 admeasuring 2 H. 50 R situated at Mauja Kondjai, Taluka-Ghatanji. The land of plaintiff and defendant are come in two different boundaries of village.

3. The defendant has submitted that, the Court Commissioner was appointed by the Court for joint measurement of the lands of the plaintiff and defendant. However, the Court commissioner has not jointly measured the lands of plaintiff and defendant. The two commissioner reports are on record; the defendant has raised the objection in writing against the said report.

4. It is the contention of the defendant that, the alleged report of commissioner is not in accordance with the direction given by the Hon'ble District Court, Yavatmal. Hence, he has prayed that,

the lands of plaintiff and defendant be jointly measure by the Tahsildar Ghatanji or Mandal Officer, Ghatanji.

5. The plaintiff has filed his say, which is at Exh. No. 94. He has strongly opposed all the contention of the application. He has submitted that, the defendant has filed this application only to prolong the case. Hence, he has submitted that, the application may be rejected.

6. Heard the arguments of the plaintiff and defendant.

7. I have perused the record; on perusal it, it can be seen that, the Hon'ble District Court at Yavatmal in Appeal No. R.C.A.75/2013 has remanded the matter to the trial Court with direction to measure the joint measurement of the lands of plaintiff and defendant. However, it can be seen from the record that, there are two commissioners and two report. These report shows that, the lands of plaintiff and defendant were measured separately and not jointly. It can also be seen from the evidence of the commissioner that, they did not measure the lands of plaintiff and defendant as per direction of Hon'ble District Court.

8. Thus, from the above discussion, I am of the view that, the purpose of appointment of Court commissioner is not serve, because he did not measure the lands of plaintiff and defendant as per direction of the Court. He is appointed to aid the Court. However, purpose of appointment of Court commissioner is not achieved in the instant case. Hence, to give justice to both parties and to bring out truth facts before the Court, a joint measurement is

very necessary. Hence, I am of the view that, again the measurement should be done by the Court Commissioner.

9. It is prayed that, Tahsildar, Ghatanji or Mandal Officer should measure the lands of plaintiff and defendant. In this regard, I am of the view that, an expert person should measure the lands.

10. Accordingly, I pass following order.

ORDER

- 1) The application below Exh. No. 91 is partly allowed.
- 2) District Inspector of Land Records, Yavatmal is hereby appointed as Court commissioner to measure whole land of field S.No. 22 of Mauja Kondjai, Tq. Ghatani, Dist. Yavatmal and field S.No. 110 of Mauja Saikheda, Tq. & Dist. Yavatmal including holdings of parties with specific instruction to collect material documents and to give notice to all concerned in respect of measurement well in advance and thereafter commissioner to submit his report along with map.
- 3) The defendant is directed to deposit the charges of measurement in the office of D.I.L.R. Yavatmal.
- 4) Accordingly, issue letter to the D.I.L.R. Yavatmal.
- 5) The Tahsildar, Ghatanji or Mandal Officer, Ghatanji is not appointed as Court commissioner.

Date :02/02/2021.

(F. T. Shaikh)
Civil Judge Junior Division,
Ghatanji.