



RCS No.76/2022
Bhimrao Vs. Seema and Ors.
CNR.No.MHYA210024042022

ORDER PASSED BELOW EXH.25

[Dated : 03/04/2025]

1. The present application is filed by the plaintiff and defendant jointly for grant measurement of suit property bearing Gat No.237, 238 and 258 situated at village Wanjari.

2. It is contented by the plaintiff and defendants that, they have amicably settled their dispute through mediation. As per the terms of settlement arrived before the trained mediator, they have filed present application for joint measurement for suit property. The plaintiff and defendants are ready to measure their respective property and also ready to pay its measurement fee. Lastly, they prayed to allow the application.

3. On perusal of record, it appears that, the present suit is filed for removal of encroachment and recovery of possession. It is contention of the plaintiff that, the defendants have made encroachment to the extent of 0.23 HR. Further, record shows that, the suit was referred for mediation. The trained mediator submitted his mediation report at Exh.24. The dispute is settled before the trained mediator. The mediation report content the terms of settlement. As per the terms, the plaintiff and defendants are ready to measure their respective property jointly through deputy land record office. They are also ready to pay respective measurement fee. As per the measurement report, they will handover the excessive land in possession to each other.

4. It is settled principle of law that, in cases of dispute of boundary or identification of immovable property, the court shall order local investigation under Order 26 Rule 9 of the C.P.C, in order to determine whether there is an encroachment. It is always desirable to get the fields measured by an expert and find out exact area encroached upon. The oral evidence cannot conclusively prove such an issue. The dispute between the parties to the present suit is of encroachment and there is a dispute about the nature and exact size of the encroachment. To resolve this dispute oral evidence is not sufficient.

5. As stated above, there is a settlement between the plaintiff and defendants. Therefore, as per the terms of settlement, the present application needs to be allowed. Moreover, the joint measurement is necessary to elucidate the matter in controversy in the suit. Hence, considering the above findings, I pass following order:-

Order

- 1] The application is allowed.
- 2] Deputy Superintendent of Land Record, Wani, is appointed as a Court Commissioner for measurement of agricultural land in Gut No.237, 238 and 258 situated at village Wanjari, Tq. Wani Dist. Yavatmal.
- 3] The Deputy Superintendent of Land Record, Wani is directed to measure land in Gut No.237, 238 and 258 and specify area of encroachment if any made over the land of plaintiff and detail report showing the encroached portion, if any by

following procedure laid down under survey manual and file the same on record within one month after receipt of writ.

- 4] The plaintiff and defendants are directed to supply all necessary documents to the Court Commissioner and shall deposit the required fees of the Court Commissioner in the office of Deputy Superintendent of Land Record, Wani.
- 5] The plaintiff and defendants are directed to file receipt of measurement fee deposited at the office of the Court Commissioner.
- 6] Issue writ to the Court Commissioner accordingly.

Date : 03/04/2025.

[Shahaji D. Bhosale]
Civil Judge (Jr. Div.,) Wani.

I Abhay Pramod Bhoyar, Stenographer of (C.J.J.D & J.M.F.C, Wani,) affirm that, the contents of this PDF are same words for words, as per the original Order.