

1. Heard Ld.Adv.of both the side at length. Perused application say and record.

2. Record shows that, the suit is filed on 25/09/2012. The evidence of plaintiff is complete. The evidence of defendants is in progress. For defendants their witness no.2 who is the Measurement Officer has been examined by them. Plaintiff cross examined the witness and the matter was posted for further evidence of defendants, as on 15/02/2017. On that date the present application came in.

3. By this application defendants stated that, Measurement Officer, during the examination in cross was asked certain technical questions, whereby the measurement was objected. He stated that the record of disputed measurement was destroyed. Therefore in order to have proper record defendants prayed for fresh measurement of the land of themselves as well as of the plaintiff, at their costs.

4. Plaintiff objected this saying that the Counter Claim of defendants is based on the measurement of 2003. To prove said fact they examined Measurement Officer. But as they failed, they moved present application to collect evidence which is not tenable.

5. Now if the total contents of the application are perused

it clearly reveals that, defendants moved this application only because plaintiff obtained certain admissions from the witness of the defendants. Which clearly shows that in order to fill lacunas in the evidence of his witness defendants moved this application. This is certainly not legal and tenable.

6. Further the Counter Claim of the defendants is based on the measurement carried in the year 2003. On the basis of which issues are framed and now parties are adducing evidence. By this application defendants prayed fresh measurement and thereby they are anticipating to insert new cause of action, on the basis of which they are expecting to decide present suit. Which is by no stretch of imagination can be done, as it is neither legal nor proper.

7. The Ld.Adv. of defendants attempted to cite some of the citations. During argument he was asked to show the relevancy to the matter in dispute. But instead showing the same by placing those citations, he attempted to burden the Court. The citation which are filed by him are not relevant to the present application as the question raised by this application is entirely different than the questions considered in those citations.

8. Under such circumstances, the question arise as to why this application is. The record and the conduct of the parties

clearly indicates that it is nothing but for to prolong the trial.

9. As such in view of above discussion, as the present application is moved to collect the evidence and to prolong the trial, is not tenable. It is therefore rejected with costs of Rs.2000/- to plaintiff.

10. Since the matter is of 2012, the parties are directed to expedite the same. Defendants are therefore directed to file all his evidence by next date positively.

11. Matter to proceed accordingly.

Shrirampur.
Date. 15/06/2017.

Kamala V. Bora
Civil Judge, S. D. Shrirampur.