

ORDER BELOW EXH. 16 IN RCS No.227/2017.

(Shakuntala Bairagi+2 Vs. Gramsevak)

CNR No. MHAH050006902017

- 1) The application is made for issuance of local investigation through Court-commissioner i.e. Dy..L.R. as provided under order XXVI, Rule-9 of the Code of Civil Procedure, 1908.
- 2) Perused the application, say, pleadings and the record. Heard Ld. Advocate M.C.Varma for the plaintiffs and Ld. Advocate Shri. S.H.Chudiwal for the defendant.
- 3) The plaintiff submitted that the defendant made encroachment over the suit land. For removal of encroachment, the present suit has been filed. To disclose the fact of actual area of encroachment, measurement through competent authority is requires to be made. The costs for the same be bear by both the parties equally. Hence, this application.
- 4) The defendant strongly opposed the application. The contents of the application is not correct. The application is not legal and maintainable. The plaintiff made vague submission as to encroachment. There is no encroachment. The application is made to collection of evidence. The application deserves to be rejected.
- 5) The plaintiffs have pleaded that Gut No.339, area 60R. Situated at village Belapur (Bk.) is owned by them. The defendant is the Grampanchayat authority. The defendant have illegally

made construction of cemetery by making encroachment over the suit property. To ascertain the area of encroachment, measurement requires to be made through expert. Dy.L.R. is the expert Government authority for measurement. In view of Order-XXVI, Rule-9 to elucidate the actual circumstances on the spot, local inspection can be allowed. If the measurement is carried out, it will be assists to consider the fact of encroachment and its actual area. For proper decision the measurement is essential. Hence, the application deserves to be allowed.

6) The plaintiff submitted that the costs of the measurement shall be bear by both the parties. The suit is instituted by the plaintiff by claiming the theory of encroachment. Therefore, the plaintiff has to bear the costs of measurement. Hence, I pass following order.

Order

1. The application Exh.16 is allowed.
2. The Dy.L.R., Shrirampur is appointed as Court-commissioner to measure the disputed land.
3. The Dy.L.R. is directed to measure Gut No.349 situated at village Belapur(Bk.), Tal. Shrirampur, Dist. Ahmednagar and specify the possessors with their respective areas in possession.

4. The Dy.L.R. is further directed to make report of the measurement and submit the same at the earliest preferably within a month.
5. The plaintiff is directed to deposit the requisite fees for said measurement in the Court within fifteen days. Prior to that the plaintiff shall verify from the concerned office of Dy.L.R. as to proposed requisite fees.
6. Costs in cause.

Date :-7-12-2019.

sd/-
(Sudhir M.Bomidwar)
2nd Jt. Civil Judge, J.D.,
Shrirampur.