

Order below Exh.123 in Reg.C.S.No.103/2012.

The plaintiff has filed this application for appointment of Court Commissioner. The plaintiff has claimed that during the existence of status-quo order the defendant carried out the construction over the suit property and completed the construction. Thereafter, the plaintiff carried out the amendment in the plaint and claimed the mandatory injunction to remove the construction over the suit property. Therefore, the plaintiff prayed to appoint D.I.L.R., Newasa as a Court commissioner.

02. The defendant filed the say at Exh.126 and opposed the application. Along with the suit, the plaintiff filed a map of T.I.L.R., Newasa. The measurement is carried out before the institution of the suit by the mother of the plaintiff. Therefore, another measurement cannot be carried out. Likewise, the plaintiff also filed the application for pilot commission at Exh.15 and it is rejected. The City Survey No.140 is and was in the possession of the defendant. The defendant prayed to reject the application.

03. From the above facts, the following points arise for my determination and I have recorded my finding thereon as under.

| Sr.No. | Point | Findings |
|---------------|---|-------------------------|
| 1 | Whether the appointment of Court commissioner is necessary to resolve the dispute between the parties ? | ... Yes |
| 2 | What order ? | ... As per final order. |

Reasons

As to point No.1 and 2 :-

04. The Learned counsel for the defendant relied on Chandrarao Hanumanrao Wable Vs Dhondu Fula Patil reported in 2012(2) All MR 267. In this case, T.I.L.R. is appointed for measurement and accordingly the report was placed on record. The evidence of the plaintiff was over and thereafter the plaintiff applied for appointment of D.I.L.R. as a Court commissioner. It is held that in absence of any grievance about the earlier measurement the second commission cannot be appointed.

05. Heard learned counsel for the parties. I have also perused the order below Exh.15 for appointment of pilot commission. The said order is passed on 17/04/2010. Thereafter, the plaintiff has carried out the amendment in the plaint i. e. as per order below Exh.97 and claimed the mandatory injunction for removal of construction. The plaintiff has alleged that during the existence of status-quo order the defendant carried out and completed the construction over the suit property. It is also material to mention that one previous suit R.C.S.No.62/1985 was decreed in favour of the plaintiff, the plaintiff claims that defendant continues the obstruction. Therefore, darkhast No.36/1996 is also pending. The plaintiff claims the ownership over the suit property. The plaintiff also claims to remove the illegal construction over the suit property. It is alleged that it is carried out by the defendant during the existence of status quo order. The plaintiff is claiming the mandatory injunction to remove the construction. The situation while deciding the application Exh.15 is different one from

today. While deciding the Exh.15 there was no any amendment for mandatory injunction. At present, the plaintiff carried out the amendment. Likewise, the measurement is carried out by the mother of the plaintiff before the institution of the present suit. It means no any Court commissioner is appointed earlier in the present case. The plaintiff alleged that during the continuation of the status-quo order the defendant carried out and completed the construction over the suit property. So to decide the suit, the exact area of the construction and location is necessary. Therefore, the appointment of Court commissioner in the alleged encroachment and construction is also necessary. Hence, I answer point No.1 in the affirmative and pass the following order.

ORDER

1. The application is allowed.
2. D.I.L.R., Newasa is appointed as a Court commissioner.
3. The Court commissioner is directed to carry out the work of commission as mentioned in the application and submit the report as early as possible.
4. The plaintiff is directed to deposit necessary commission fee in the office of D.I.L.R., Newasa.
5. The plaintiff is directed to supply all the necessary documents to the Court commissioner in respect of commission without failure.

Date: - 06/06/2016.

(**P.V.Bulbule**)
Civil Judge, Senior Division,
Newasa.