

Order below Exh.139 in Reg.C.S.No.103/2012.

CNR - MHAH14-000227-2012

The plaintiff has filed this application and stated that the suit is instituted for possession of encroachment area and injunction. The T.I.L.R. is appointed as a Court commissioner and he has submitted the map and measurement report. On perusal of B sheet of Map, it appears that adjoining to the suit property, there is one road and adjoining to the said road from the western side concrete (पक्के) construction is shown but possession of the said area is not shown. The red colour portion is belonging to defendant No.1 to 5, blue colour area is belonging to Raju Ahmed, but the said concrete (पक्के) construction area is not shown by any colour. Therefore the B map is not complete. Hence it is prayed to ask the clarification about the possession of said area and to produce the A sheet map.

02. The defendant filed the say at Exh.143 and opposed the application. The application is not lawful one. It is not filed with signature of the plaintiff. The report of the first commission is not cancelled or rejected. The plaintiff should file the appeal. A sheet map is the permanent record of the T.I.L.R. office. The plaintiff cannot claim the clarification about the possession. The plaintiff has not objected at the time of measurement. The defendant prayed to reject the application.

03. Heard the learned counsel for the parties. The defendant relied on following cited judgments.

1 *Dnyandeo Vithal Salke and others Vs. Dagdu Kadar Inamdar, reported on 2017(5) All MR 104* – It is held that in a suit for simpliciter injunction with direction to submit report as regards possession and user

of disputed land is not permissible in law. This would amount to making effort to collect evidence regarding possession.

2. *Krupashankar Mukundlal Sahu (Deleted) & ors. Vs. Tilakraj Khushalchandra Wadhawan reported in 2010(5) All MR 731* – In this case appointment of Court commissioner for measurement of land is sought. The report found ambiguous. The suit is dismissed as plaintiff failed to prove ownership on encroached strip of land. Merely exhibiting and admitting report in evidence does not prove its contents. Moreover concurrent and well-reasoned judgment on the basis of relevant admissible evidence passed by Trial and First Appellate Court. Hence, it is held that the dismissal of suit liable to be upheld.

04. I have perused the order below Exh.123. The court commissioner is not directed to specify the possession and it is settled law that the evidence cannot be collected regarding the possession through the commission. It cannot be directed by the court. Hence, the prayer for clarification is not acceptable. The parties have not filed any say to the commission report. The case is old one and parties are directed to file say to the report.

05. The plaintiff claimed the production of A sheet regarding the colour. It is original record of the TILR office. The certified copy of the A sheet map available. It can be produce by the plaintiff. Hence I pass the following order.

ORDER

1. The application is rejected.
2. The parties are directed to file the say on the commission report.
3. No order as to costs.

Date: - 02/01/2018.

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