

MHAH220008902020



ORDER BELOW EXH.33
(Passed on 01st September, 2023)

The present application filed by the plaintiff and defendants jointly for an appointment of a court commissioner for fixation of boundaries of Gat no.371 (Hereinafter, it is called as 'the suit property').

2. It is contentions of the plaintiff and defendants that the plaintiff filed the present suit for perpetual injunction against defendants. As per an order of the court TILR, Karjat measured the suit property, accordingly, filed a map and report on record. As per said measurement it is necessary to fix boundaries of the suit property. It is further contentions that if boundaries of the suit property is fix then it will helpful for settlement of dispute between them. Therefore, the plaintiff and defendants filed the present application jointly and prayed to allow the same.

3. Heard learned advocate Mr. R. B. Dahiwalkar for the plaintiff. Also heard learned advocate Mr. S. B. Shinde for defendants.

4. Perused the record. After perusal of record it appears that the present suit filed by the plaintiff for perpetual injunction.

5. After perusal of record it is clear that on 09-10-2020 defendants filed an application for appointment of a court commissioner for measurement of the suit property below Exh.28,

accordingly, on 09-10-2020 said application was allowed by my learned predecessor. After perusal of record it also appears that after measurement of the suit property the measurer filed his report below Exh.30.

6. It is pertinent to note here that in any suit the court may issue a commission to make a local investigation and report thereon to the court. After perusal of the present application it is clear that the plaintiff and defendants filed the present application for fixation of boundaries on the ground that for resolving the dispute it is necessary to fix boundaries of the suit property. It is pertinent to note here that already the suit property is measured, accordingly, the measurer filed his report below Exh. 30. Furthermore, the plaintiff filed the present suit only for perpetual injunction. After perusal of plaint it is clear that the plaintiff prayed that restrained defendants their servants, relatives and contractors from disturbing her peaceful possession over the suit property. Furthermore, it is the simplicitor injunction suit. Moreover, the present suit is not for recovery of possession. It is pertinent to note here that reasons mentioned in the present application for fixation of boundaries of the suit property is not a proper. Therefore, the present application of the plaintiff and defendants is deserves to be rejected. Therefore, in the interest of justice I proceed to pass the following order.

ORDER

The present application is hereby rejected.
(Pronounced and dictated in the open court)

sd/-

Date:- 01-09-2023

Mohmad Wasim Akram
S/o Mohmad Jalal Sheikh
Civil Judge Junior Division,
Karjat.