

ORDER BELOW EXH. 37 IN SPL. C. S. NO. 8/2016.

(CNR : MHAH23-000171-2016)

1. Plaintiff has filed present application under O. 18, R.4(2) of Civil Procedure Code to appoint Court Commissioner to record evidence of the plaintiff. Say of defendant is called. She has filed her say vide Exh. 39 and objected the application.

2. It is argued on behalf of plaintiff that she has filed civil suit for declaration and permanent injunction against defendants. It is further argued that plaintiff has filed her evidence on affidavit vide Exh. 32 on 20/02/2018. It is further argued that due to some reasons despite of plaintiff being present her cross examination could not be recorded. It is further argued that plaintiff is old lady of 74 years age and as she fell down, she is unable to walk. It is further argued that she is bed ridden. It is further argued that therefore, the considering the said reason commissioner may be appointed to record her evidence i.e. cross examination. It is further argued that if application is allowed no prejudice would cause to the defendant. Hence, application may be allowed.

3. On the other hand, it is argued on behalf of the defendant that application filed by the plaintiff is not legal and proper. It is further argued that after filing evidence on affidavit on 20/02/2018 plaintiff has remained absent and was not available for cross examination. It is further argued that on 25/02/2020 matter was fixed subject to costs however, plaintiff has not remained present for cross examination. It is further argued that plaintiff has not filed any document on record to show that she is unable to walk and she is bed ridden. It is further argued that plaintiff has filed present application only to prolong the matter and harass the defendant. Hence, application may be rejected.

4. Perused application, say and record of the case. Heard both the parties. On perusing record, it appears that, plaintiff has filed suit for declaration and permanent injunction agisnt the defendant. Further, it appears that issues are framed on 04/01/2017 and plaintiff has filed her evidence on affidavit on 20/02/2018. On perusing record, it appears that on some dates plaintiff was present and other dates she is absent. Plaintiff has filed an application as per O. 18. R. 4(2) of C.P.C. to appoint Commissioner to record her further evidence on the ground that she is unable to move and she is bed ridden. Admittedly, as per O. 18, R. 4(2) of C.P.C., Commissioner may be appointed to record evidence or cross examination of the witness. In the present case, plaintiff has moved an application on the ground of her inability to move and she is bed ridden. It is pertinent to note that application is filed on 04/03/2020 and till date she has failed to produce medical certificate to that effect on record. Thus, it appears that, after filing her evidence on 20/02/2018 she has filed present application after two years on 04/03/2020. Further, as discussed above, no medical certificate is filed on record to support her contention. Therefore, I am of the view that application is not tenable for want of cogent and sufficient material on record. Hence, I proceed to pass following order.

ORDER

- 1) The application (Exh. 37) is hereby rejected.

(Dictated and pronounced in open Court.)

Shrigonda.
Date : 09/03/2021.

(Sangram S. Shinde)
Civil Judge, Senior Division,
Shrigonda.