

Reg Civil Suit No.21/2019
Abdul Salim Vs Abdul Rauf
Order Below Exh.16

CNR.No. MHAM080003522019



R.C.S.No. 21/2019
Ab. Salim – Vs -Ab. Rauf
Exh. No.16

Order Below Exh. No.16.

(Passed on 18th Day of December, 2024)

1. The present application is filed by the plaintiff to review the order passed below Exh No.12 dated 01/11/2023.
2. It is the contention of the plaintiff that, he had applied under Order 26 Rule 9 of CPC for the appointment of Court Commissioner and his application is rejected by this Court. This Court while rejecting the application has given a finding that, plaintiff has not filed any photograph to show the auto of defendant is in front of the house of plaintiff. In fact the plaintiff has filed said photograph below the list at Sr. No. 10 to 12. This Court further given a finding that, appointment of Commissioner would be collection of evidence in fact said finding is contradictory to law settled by Hon'ble High Court and Supreme Court. On this score the plaintiff prayed to allow his application.
3. On perusal of record it appear that, the finding of this Court is mostly depend upon the factor that, appointment of Court Commissioner would be for collection of evidence. Therefore, it has to see that whether said finding is an error apparent on the face of record. On going through the pleading of parties in order to find error apparent face on record in the order below Exh. No.12 dated 01.11.2023, it appear that, plaintiff has filed the present for declaration and perpetual

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injunction against the defendant. It is the pleading of plaintiff that, towards the southern side there is easmentory road proceeding east to west and near said road there is an easmentory road of 3 feet to enter into the house from northern side. If this pleading is consider it appear that, burden to prove lies on the plaintiff to prove there is a easmentory way and issue also failed in that regard below Exh. No.11. Therefore, I do not find error apparent on case of record in the finding given the order Exh. No.12 that, appointment of Commissioner would amount to collection of evidence. The suit of plaintiff is not for the removal of encroachment. Moreever, it is pertinent to note that, present application is filed beyond the limitation of 30 days. The order below Exh. No.12 passed on 02.11.2023 whereas the present application on 14.08.2023. Hence, I proceed to pass following order.

ORDER

The application below Exh. No. 16 is rejected.

Date. 18.12.2024

Vijay. G Parware
Civil Judge Junior Division
Bhatkuli, Dist. Amravati

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Certificate

I affirm that the contents of this P.D.F. file order are same word to word, as per the original order.

Name of the Stenographer : V.M.Bhangale

Court Name : Court of CJJD, Bhatkuli.

Date : 18.12.2024

Order signed by the

Presiding Officer on : 18.12.2024

Order uploaded on : 18.12.2024
