

Order below Exh.14 in R.C.S. No.55/2018

(Dtd. 20th July 2018)

This is an application filed on behalf of the defendant no.1 and 3 under Order 26 Rule 9 of the Code of Civil Procedure for appointment of Court Commissioner. Perused the application and say thereon. Heard both the learned Advocates on the same at length.

2. Learned Advocate for defendant no. 1 and 3 submitted that the defendants have filed counter-claim in this suit. The plaintiff in his plaint had asked for way on the basis of registered sale-deed dated 13/05/1985 and 01/08/2016. The said sale-deed mentions the bullock cart way from joint boundary of agricultural land bearing survey no.139/1, 129/2, 130/10 and 139/1A. The plaintiff in this suit has mentioned way towards southern side of land of defendants in survey no.130/10. Since beginning the plaintiff is having way to go to his field bearing survey no. 132/2 and 132/1 from Loni-Aloda road which further goes from land bearing survey no.132/5, 132/4, 132/3. Today, also the said road is in existence. In order to decide temporary injunction application it is necessary to bring report of Court Commissioner. It will help to bring on record actual position of the spot. Hence, Learned Advocate for defendant no.1 and 3 has requested to allow this application.

3. To support this contention learned Advocate for defendant no.1 and 3 has relied on following case laws :

A) *Yeshwant Bhaduji Ghuse Vs. Vithobaji Laxman Ladekar. 2010 (3) Mh.LJ. 956*, wherein it is held that Court has discretion to order local investigation. The cases of boundaries dispute and disputes about

identity of land are instances when a court should order local investigation under Order 26 Rule 9 of C.P.C.

B) *Kolhapuri Bandu Lakde Vs. Yellappa Lakde Thrs.LRs. 2011 (3) Mh.Lj 348*, wherein it is discussed that appointment of Court Commissioner would assist the court in arriving at the just decision in dispute of suit land. However, the report of court commissioner would not be conclusive and if any of the party are aggrieved by the same, such a party would always be entitled to cross examine the court commissioner, so as to challenge the veracity of the report.

4. Learned Advocate for the plaintiff in his say has strongly opposed to allow this application. He submitted that defendants have submitted false map alongwith their counter claim. It is not admitted by the plaintiff. The defendants in their written statement had admitted the bullock cart, truck and tractor way till southern corner of gat no.130/10. The plaintiff in his claim has mentioned that the defendants have ploughed the way towards southern corner of gat no.130/10. It was used by the plaintiff. The defendants wishes to bring on record said fact so, they have filed this application. The defendants have filed this application to collect evidence and prolong this matter. Therefore, learned Advocate for plaintiff has requested to reject this application with costs.

5. To support this contention learned Advocate for plaintiff has relied on the case law :

A) *Sayyad Mushtaque Ahmad & Ors. Vs. Syed Ashiq Ali Khan, 2011 (6) Mh.LJ 334*, wherein it is held that Court Commissioner can not be appointed to collect evidence.

6. Considering submissions of both the sides and on perusal of nature of this suit it appears that this suit is for declaration and perpetual injunction. As per contention of plaintiff he is having way to go to his field bearing survey no.132/2 and 132/1 through southern corner boundary of gat no.130/10 which is owned by the defendants. On the other hand, it is the contention of the defendants that the plaintiff is having another way through Loni Aloda Pandhan road which goes from gat no.132/5 , 132/4, 132/3 through southern boundary directing East West. This is plainly denied by the plaintiff. In such circumstances, in order to gather actual situation of the spot it will be proper to appoint Court Commissioner. It will help for proper adjudication of the matter and to decide this suit on merit. It will not cause any hardship to the plaintiff. Therefore, it will be proper to allow this application. Hence, following order :-

Order

- 1) This application is allowed.
- 2) Adv.Shri.C.V. There is appointed as Court Commissioner to inspect the spot bearing survey no.132/1, 132/2, 130/10 situated at mouja Loni, Tq.Warud, Dist.Amravati and submit report accordingly.
- 2) Court Commissioner to inspect the way as shown by plaintiff and defendant and shall submit report accordingly.
- 3) Requisite fees Rs.1200/- of Court Commissioner shall be paid by defendant no.1 and 3.
- 4) Issue letter to Court Commissioner accordingly.

SD/
(R.S.Adikine)
Civil Judge (J.D.)
Warud.

Dtd.20/07/2018.