

MHAU050019202017



RCS No.388/2017
Ganesh VS. Dhondyabai

ORDER BELOW EXH. 18 IN R.C.S.No.388/2017
(CNR No.MHAU0500 1920 2017)

1. The plaintiff moved the present application for appointment of T.I.L.R as a Court Commissioner under Order 26 Rule 9 of C.P.C.
2. Learned Advocate of plaintiff submitted that the plaintiff is owner and possessor of 2 H. 99 R. of Gut No.78/3 mauje Shirsagaon, Tq. Vaijapur i.e. suit property. The present suit is filed for demarcation and fixation of boundaries of the suit property alongwith recovery of possession of encroached area.
3. He further submitted that the defendants are the adjacent land owner and they on the east side of the suit property, destroyed the common bandh and thereby encroached over the part of the suit property. Therefore, the fixation of boundaries and recovery of possession is need to be done and for that purpose the appointment of TILR as a Court Commissioner need to be done and hence, he lastly prayed that the present application be allowed.
4. Learned Advocate of defendant Shri. Raviraj Shinde submitted that there is a another remedy of fixation of boundaries and there was no any encroachment over the suit property as claimed by the plaintiff. The present application is vague in nature and deserves to be rejected.

5. Perused the record. It appears that the present suit is of removal of encroachment, recovery of possession and fixation of boundaries. However, at this stage the position of encroachment is not clear. If the alleged encroachment is not clear, the will not be able to come to the just decision of the matter, therefore I find substance in the learned advocate of plaintiff. More-soever, the defendants have opportunity to cross examine the concerned Court Commissioner. Therefore, it is necessary to appoint Court Commissioner to ascertain the extent and by whom encroachment, if any, made over to the suit property.

6. Considering, the above said discussion, it is my considered view that the application deserves to be allowed. Therefore, I pass the following order.

ORDER

1. The application Exh. 18 is allowed.
2. The Taluka Inspector Land Record, Vaijapur is hereby appointed as Court Commissioner.
3. He is directed to make measurement of entire land Gut No. 78/3, situated at village Shirasgaon, Tal. Vaijapur and show the encroachment over the suit property, if any, in the map of measurement.
4. He is further directed that prior to visiting Gat No. 78/3 , he shall issue notices to defendants and adjacent owners of Gat No. 78/3, as per plaint.
5. Plaintiff shall deposit commission fee directly in the office of T.I.L.R., Vaijapur.

6. Plaintiff shall pay process fee and shall supply necessary documents and after compliance, writ be issued to T.I.L.R.,
Vaijapur.

Date:- 05.03.2022

(S.R.Shinde)
2nd Jt. Civil Judge Jr. Div.
Vaijapur.

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 : G.K.Jadhav,
Court : Sachin R. Shinde, 2nd Jt. C.J.J.D. &
J.M.F.C., [Court No.2], Vaijapur,
Date : 05.03.2022,
Order signed by the presiding officer on: 05.03.2022
Order uploaded on : 05.03.2022