

ORDER BELOW EXHIBIT-23 in RCS No. 48/2014.

Present application is filed by the defendants to appoint a Court Commissioner to find out as to whether Andhari to Lonwadi road passed from the land Gut No.171 and also to find out as to whether Palshi to Lonwadi bullock-cart road passes through the northern side of land Gut No. 171.

2. It is asserted that Palshi to Lonwadi bullock-cart road passes through northern side of land Gut No. 171. It is further asserted that Lonwadi - Palshi-Kerhala road passes from the land Gut No. 171. Due to which land Gut No.171 is divided in to two parts. A large portion of land Gut No. 171 is situated on the southern side of the said road and a small portion of one acre is located on the northern side of the said road. Palshi - Lonwadi old bullock-cart road is on the northern side of the small portion of one acre land of the defendants. Land Gut No. 154 owned by the plaintiffs is located on the northern side of the said bullock-cart road. It is further asserted that the defendants have built a cow-shed to tie the animals and adjacent to it started construction of Bakhar in RCC. In order to grab the land of the defendants, the plaintiffs have intentionally shown the road on the southern side of their land Gut No. 154. They have suppressed the material facts. Hence, the present application for the afore stated relief

3. Plaintiffs have objected the application by filing the say Exh-24. It is their contention that the present application is not maintainable. There is no need to appoint a commissioner when the official documents are before the court. Defendants would have requested the court to appoint an advocate, but they have not done so. They have filed the present application to collect the evidence. Same can not be allowed. Contents of the application are false and imaginary. They have denied that Andhari-Lonwadi-Palshi-Kerhaha road passes through the land Gut No. 171. According to them, said road passes through the boundaries of land Gut Nos. 154 & 171. They have neither built the cow shed nor started construction of the Bakhar. Application is baseless. Plaintiffs have, therefore, prayed for rejecting the same.

4. Perused the record and proceeding. Heard the learned advocates appearing on behalf of respective parties. It is relevant to note that the present suit is instituted for simplicitor perpetual injunction. It is the case of the defendants that their one acre land of Gut No. 171 is located in between Palshi-Lonwadi bullock cart road and Andhari to Lonwadi road. According to them, cow shed and the construction of Bakhar was started on said one acre land.

5. As noted above, present suit is instituted for simplicitor perpetual injunction. Learned advocate appearing on behalf of the defendants has submitted that in the circumstances of the present case, spot inspection is necessary to find out the truth. He has made a further submission that no prejudice would be caused to the plaintiffs, if spot inspection is ordered.

6. I find force and substance in the submissions advanced by the learned advocate for the defendants. No prejudice would be caused to the plaintiffs, if the application is allowed. Spot inspection would help the court to come to the correct conclusion. It may also avoid multiplicity of proceedings.

7. It may be noted here that the plaintiffs have shown their willingness to appoint an advocate to inspect the spot. Once they are ready to go for the spot inspection, they must leave it to the court to appoint appropriate person to inspect the spot. In the circumstances, I feel that Taluka Inspector, Land Record, being a public servant and also having the necessary documents, would be a better person to do the job. For the reasons recorded herein above, application deserves to be allowed. Hence, the order.

ORDER

1. Application is allowed.
2. TILR, Sillod is appointed as Court Commissioner to inspect land Gut No. 154 and 171, situated at Lonwadi, Tq. Sillod.

3. He is directed to report whether Andhari to Lonwadi road passes through the land Gut No.171 and also to find out as to whether Palshi to Lonwadi bullock-cart road passes through the boundaries of land Gut Nos. 171 & 154.
4. Defendants are directed to bear the expenses of spot inspection and to deposit fees of TILR in his office.
5. Application is accordingly disposed of in the above terms.

Date : 21/07/2014.

Sd/-
(S. K. Khan),
Jt.Civil Judge, (J. D.)
Sillod.