

:- ORDER BELOW EXH - 35 :-

This is an application filed by plaintiff for appointment of court commissioner to inspection of suit property.

2] It is contention of plaintiff that, defendant having no concerned with suit land. They are trying to create cart way through land bearing Gat No.135. Defendants in their written statement contended that, there is existence of cart way over the common boundary of Gat Nos.135 and 136. There is no existence of cart way. Thus, to find out actual position prayed to appoint court commissioner to inspect suit lands.

3] Defendants strongly opposed to the application by filing their say at Exh-37. It is contention of defendants that, they are using cart way which is in existence over the common boundary of Gat Nos.134, 135, 136 and 137. Plaintiff wrongly stated that, defendants trying to create cart way through his land. Now suit is pending for evidence and plaintiff filed his evidence affidavit on 20.04.2019. Plaintiff only to prolong suit filed false application. Therefore prayed to reject the application with cost.

4] Read application and say. Perused record. Heard advocate for the parties, they argued as per their application and say. Under Order XXVI, Rule 9, in any suit in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, the Court may issue a commission to such person as he thinks fit directing him to make such a investigation and to report

thereon to the Court.

5] This suit is for simplicitor injunction. In the present case, burden lies on the plaintiff to prove his case. Plaintiff has to prove his possession over the suit property and obstruction at the hands of defendants. Hon'ble Bombay High Court, in *Dyandev Vithal Salke And Others Vs. Dagdu Kadar Inamdar 2017(3) Mh.L.J., and Sanjay Namdev Khandare Vs. Sahebrao Kachru Khandare 2001(2) Mh.L.J.*, herein both case's hon'ble high court held that, court commissioner can not be appointed for collection of evidence. It is well settled law that, Court Commissioner can not be appointed to collect the evidence. From the fact and circumstances no case is made out to allow the application. Hence, I passed following order,

: ORDER :

Application is rejected.

Sd/-

R. P. Thore.

Jt.Civil Judge Jr. Division,
Sillod.

Date:- 03.05.2021.

Place :- Sillod.

-: 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 Court :- Jt. C. J. J. D. Sillod.

Name of the Stenographer :- K.P.Patil.

Date of pronouncement of order on :- 03.05.2021.

Order signed by the P.O on :- 03.05.2021.

Order uploaded on C.I.S. :- 05.05.2021.
