

CNR No. MHAU110009432023

RCS No. 74/2023

Tejrao and other Vs. Majhar and others

Order Passed Below Exh. 25

1. By this application plaintiff prayed for appointment of court commissioner for identification of dispute property and spot verification.
2. The plaintiff instituted simplicitor suit for perpetual injunction.
3. The plaintiff contended that, identification of disputed property is necessary for more frequency and for the bestest understanding for not only for court also party. He further contended that, for that purpose appointment of court commission is necessary. Hence, prayed for appointment of court commissioner.
4. On other side, at Exh. 27 defendant filed his say, in which defendant contended that, the defendant and other agriculturist have agricultural land in Gut No. 19 at Phulambri. In which defendants and other have 87.75 R agricultural land in his possession and ownership. The plaintiff does not have any right and possession in Gut No. 21. He further contended that, plaintiffs have not mentioned the exact Gut number and how he came in his

ownership. The plaintiff by this application trying to collect evidence through appointment of commissioner. Plaintiff have not any property in Ward No. 5. This application is not tenable as application is wrong and imaginary. Hence, prayed for reject the application.

5. Heard both Ld. Advocate. Ld. Advocate Shri A. P. Wakode for plaintiffs argued that, by appointing the court commissioner the existence of property in Gut No. 21 will be cleared. He further argued that, evidence through court commissioner in respect of existence of disputed property is necessary for disposal of the suit. On other side Ld. Advocate for defendant Shri V.D.Dange argued that, the application is not main tenable at this stage. The plaintiff instituted suit for implicative injunction. The plaintiff is trying to collect evidence. Further, he relied upon judgment of Hon'ble High Court of judicature at Bombay, Bench at Aurangabad, in Kisanrao Kadam Vs. Ankush Hemple, Writ petition No.3339 of 2019, decided on 15th July 2022.

6. Considering the rival contention and argument following points arised and I have recorded my findings thereon, for reasons to follow:-

<u>Sr. No</u>	<u>Points</u>	<u>Findings</u>
1	Whether the reason mentioned in application is	No.

	sufficient to appoint court commissioner under Order 26 Rule 9 of the C.P.C. ?	
2	What order?	The application is rejected with costs of Rs.200/-.

REASONS

7. Read application and say. Perused record and roznama of the suit. Before deciding this application it is appropriate to go through the provision in respect of appointment of commission provided in Order 7 Rule 9 of the C. P. C.

Commission to make local investigations : *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, or of ascertaining the market - value of any property, or the amount of any mesne profits or damages or annual net profits, the Court may issue a commission to such person as it thing fit directing him to make such investigation and to report thereon to the Court:*

Provided that, where the State Government has made rules as to the persons to whom such commission shall be issued, the Court shall be founded by such rules.

8. This court gone through the citation filed by the defendant. In which Hon'ble High Court given observation in respect of the suit of encroachment and possession. The suit in hand instituted for simplicitor injunction suit. Therefore, with due respect of Hon'ble High Court the above cited citation is not applicable to this case.

9. It is settled position of law that, court may appoint commissioner in any suit in which requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market - value of any property, or the amount of any mesne profits or damages or annual net profits.

10. It is settled position that, the court commissioner not appoint to collect the evidence for any party in a suit in which the burden lies on party. Already an application of temporary injunction of plaintiffs has been rejected. Now, in the suit the issues are also framed. Suit is pending for the evidence of plaintiff.

11. The plaintiff filed this application with view to bring evidence before court about existence of disputed property in gut No. 21 through court commissioner. Moreover, with view to bring identification and verification of the disputed property. Further, the suit is simplicitor injunction. It is contention of the plaintiff in a

suit that, he has constructed the building and further construction of building was going on. The defendant restrained to plaintiff for construction. Therefore, the view to file this application is nothing but collection of evidence. Which is not permissible in respect of commissioner appointed under Order 26 Rule 1 of C. P. C. Considering above mentioned facts in view of this court the application is not tenable and deserve to be rejected. Thus, I pass the following order.

ORDER

1. Application is rejected with costs of Rs.200/-.

Date : 04/05/2024.

(Dhananjay S. Deore)

Place: Phulambri

Joint Civil Judge, (J. D.),

Phulambri

CERTIFICATE

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

Name of the Stenographer : S. D. Chavan
Court : Jt. C.J.J.D., Phulambri.
Date : 04/05/2024.
Order signed by the
presiding officer on : 04/05/2024.
Order uploaded on : 06/05/2024.