

Regular Civil Suit No. 16/2013

Waseem Ansari Vs. Abdul Latim & Otrs.

(Order Below Exh.-37)

(Passed on 06th February 2016)

Present application is filed by defendant for calling Court Commissioner for the cross-examination on the report and map submitted by him and till then hearing of temporary injunction application be kept in abeyance.

02. Defendant contended that during pendency of temporary injunction application, plaintiff filed application for the inspection of suit site which was allowed and T.I.L.R was appointed as Court Commissioner for the local inspection of road and construction along-with with the measurement of CTS 7457, Aurangabad. Court Commissioner, filed report and plaintiff, as well as, defendant denied and objected the same. Plaintiff argued on temporary injunction application. After perusing report and documents, it shows that no purpose of defendant will be served by the arguments on temporary injunction application and will be a paper decision. The Court Commissioner appointed on 20.03.2014 and till receiving the report, temporary injunction application was not proceeded for the arguments. Without deciding objection, arguments on temporary injunction application would not be proper. Therefore, present application is filed.

03. Plaintiff objected the application stating that, in order to, decide the temporary injunction application, there is no necessity to cross examine the Court Commissioner. On perusal of record, it shows that during pendency of arguments on temporary injunction application, appointment of Court Commissioner was ordered and after receiving report matter was posted for the

arguments on temporary injunction application, as well as, for objection to the report of Court Commissioner. Defendant and plaintiff have objected to the report of Court Commissioner. Counsel for the plaintiff argued that while deciding admissibility of the report of Court Commissioner at this stage, his cross-examination is not necessary prior to proceeding matter for the arguments on temporary injunction application. While considering application of temporary injunction application, parties have to file their documents and evidence. In the present matter, defendant contended about cross-examination, but while considering present stage and in absence of examination-in-chief of witness, no cross-examination could be proceeded. Further, counsel argued about the cross-examination of witness, but that aspect can be considered at the time of judgment of the matter wherein admissibility of Court Commissioner will be considered and decided.

04. Counsel for the defendant relied on Tajmul Hussain s/o Mulla Mumtaz Hussain Vs. Satish s/o Bhanudas Chavan, 1994 Mh.L.J.293 in which it has been held that :-

“(B) Civil Procedure Code, 1908, Order XXVI, Rule-1 Commissioner – Appointment of claim to particular portion of the land by the parties – It is for the court to determine that the land belonged to one survey number or the other – For this purpose it has to take assistance of an independent authority i.e. City survey officer by appointing him as a Commissioner to measure and demarcate the lands – Application for appointment of Commissioner cannot be rejected merely because there are several maps on record”.

Lordship further observed that,

“if at all any party was aggrieved by the report given by Commissioner so appointed by the Court, an opportunity would

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have become available to that party to cross-examine the Commissioner and to point out how his conclusions were not correct. The party, who was not aggrieved could also prove how his conclusions were correct.”

After considering observations in the cited case and the stage of present case, I found that at this stage application of defendant could not be allowed. Unless and until examination-in-chief is on record, there will be no cross-examination. Defendant by present application sought permission for cross-examination, which cannot be allowed. Therefore, I proceed to pass the following order.

ORDER

01. Application is rejected.
02. Costs in cause.

Sd/-

(S.J.Biyani)

Civil Judge Senior Division
Corporation Court, Aurangabad

Date :- 09.02.2016

CERTIFICATE

I affirm that the contents of this P. D.F. file judgment/order are same, word to word, as per the original judgment/order.

Name of the Stenographer	: Manoj S. Nangre
Court	: Civil Judge S.D.(Corporation), A.bad
Date	: 09.02.2016
Order signed by the presiding officer on:	09.02.2016
Order uploaded on	: 09.02.2016