

ORDER BELOW EXH. 58

- 1.** This is an application filed by the plaintiff to appoint court commissioner for inspection of suit property under order 26 Rule 9 of Code of Civil Procedure.
- 2.** As per plaintiff, suit property is 387 having property no. 21/129 and defendant is adjacent owner having property 21/130. Present suit is filed for permanent injunction to restrain defendant no. 1 to 5 from not to obstruct the plaintiff from constructing the wall compound. By moving present application plaintiff wants to inspect the suit property to see whether partly wall compound was constructed, whether they are entitled for the construction, due to non construction of wall compound whether any inconvenience is caused to the tenant of plaintiff. To brought the factual position on record plaintiff filed present application.
- 3.** Defendant raised his strong objection stated that, present suit is for perpetual injunction. It is the duty of plaintiff to prove his case by giving proper evidence. Present application is beyond ambit and scope of order 26 R 9 of C.P.C. It is settled law that in injunction suit, court commissioner can not be appointed. Hence he prayed to reject the application.
- 4.** Order 26 Rule 9 of Code of Civil Procedure speaks that "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 mense profits or damages or annual net profits, the court may issue a commission to such person as thinks 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 bound by such rules.

5. At this juncture, if we peruse the pleading of both the parties, it is seen that suit is for permanant injunction. Defendant has illigally constructed window towards the northen side due to which dispute arrows between plaintiff and defendant. Plaintiff has constructed wall compound leaving the common space but defendant tried to obstruct the construction of wall compound. Therefore he filed present suit. Defendant denied the plaintiff's contention. Plaintiff wants to bring the above said fact on record through Court Commissioner. Court Commissioner can not be appointed to collect evidence. More over in suit of permanant injunction, court commissioner can not be appionted to collect the evidence. Considering the factual position and circumstances on the record, I pass the following order :

ORDER

This application is rejected.

Date : 09/11/2021
Place : Majalgaon.

Sd/-
(Smt. P.A.Waghmare)
Jt. Civil Judge, (J. D.),
Majalgaon.