

Order Below Exhibit No. 15.

[Passed on 29/11/2021.]

Perused the application and say. Heard learned advocate for the plaintiff as well as learned advocate for the defendant and gone through the record.

2]. Present application is moved by the defendant for appointment of Court commissioner under Rule 9 of Order XXVI [26] of the Code of Civil Procedure, 1908 [hereinafter 'the Code' for sake of brevity] on the grounds that the plaintiff has filed the suit for declaration and permanent injunction alongwith application of temporary injunction. The plaintiff is claiming his ownership over nazul sheet no. 9-A, plot no. 1-A/28, area 187.5 sq.m., out of that, 67.5 sq.m. alongwith measurement east-west 4.50 meters and north-south 15 meters. Further, as per the plaintiff, land from western side of the above said property, has been encroached by him towards north-south side and also constructed one door, window and also constructed 2 to 2.5 feet slab without permission of the plaintiff. So, for best adjudication and to brought the ipso-facto position on record about the actual position of the plots of the plaintiff and him, it is just and necessary to appoint the commissioner i.e. Taluka Inspector of Land Record, Jalgaon Jamod for local inspection of the same. Further, he is ready and willing to pay the commissioner fee for the measurement of his plot nazul sheet no. 9-A, plot no. 1-A/28, 120 sq. m out of total area 187.5 sq.m..So, he has prayed for allowing the application.

3]. Per contra, the plaintiff has resisted the application on the counts that he has instituted the suit for declaration and permanent injunction alongwith application of temporary injunction against the

defendant on 03/03/2021 and the defendant has appeared in the suit on 22/03/2021. After appearance of the defendant, he neither filed written statement nor filed say and without disclosing the defence by the defendant, the present application is not tenable. Thus, application is not tenable in eyes of Law. The defendant, filed the present application with a view to prolong the application of temporary injunction. So, the present application is liable to be rejected with heavy costs.

4]. It would not be out of milieu to state here that to appoint a commissioner, the Court has to keep in mind the aspects such as total pleadings of both parties, relief claimed in the suit and necessity to appoint commissioner to decide real controversy between parties. In present matter as per Order XXVI [26] Rule 9 of the Code, in any suit, in which the Court deems a local investigation to be requisite or proper for the purpose elucidating any matter in dispute, or of ascertaining the market value of any property, or the amount of any *mesne* profit or damages or annual net profits, the Court may issue a commission to such person, as it thinks fit, directing him to make such investigation and to report thereon to the Court. On basis of abovesaid proposition of Law, it appears that when the Court deems proper that to elucidate any matter in dispute, local investigation can be done then the Court Commissioner can be appointed. In such scenario, it is required to be seen whether relief prayed can be granted or not.

5]. Perused the record. It appears that the plaintiff has instituted the suit for declaration and permanent injunction. According to the plaintiff, he had purchased the suit property from the defendant on 17/12/2015 by way registered sale deed no. 2574/2015 and the

same is in her possession since then. Plot of the defendant is situated towards western side of the suit property. The defendant by taking disadvantage of lockdown imposed due to outbreak of Covid-19, started to make construction on his plot from western corner of the suit property. Even, the defendant kept door and window of his house, towards its eastern side wall. Thus, she made complaint to Municipal Council, Jalgaon Jamod on 01/03/2021 and that she came to know that prior permission is not taken by him. Further, the defendant appeared in the matter but not yet filed his written statement. So, his stance about averments of the plaint are not before the Court. The defendant has not disclosed his defence and so, his side is not before the Court. In such scenario, whether he is admitting the version of the plaintiff or denying the same is not cleared. Unless and until, his written statement will not be filed, his defence or stand cannot be assumed. So also, purpose of appointment of Court commissioner is elucidating any matter in dispute. So, as the defendant neither disclosed his stance nor propounded his contentions at this stage, it will not be proper to grant remedy/relief claimed. Thus, the application is liable to be rejected. As such, I proceed to pass the following order.

ORDER

[1]. The application is rejected.

Date: - 29/11/2021.

Place:- Jalgaon Jamod.

**Sd/-
[B. S. Pal]
Civil Judge Junior Division.
Jalgaon Jamod.**

CNR. No. MHBU09000325-2021.

RCS No. 15/2021.
Kausalyabai Vrs. Narayan.

Certificate

I affirm that, the contents of this PDF are same words for words, as per the original order.

Name of Stenographer : Mr. A. A. Tholbare.

Name of Court : Civil Judge Junior Division, Jalgaon Jamod.

Upload on : 11/01/2022.