

R.C.S No. 28/2020

Hetram & Ors .V/s. Pralhad & Ors.

ORDER BELOW EXH. 36

Plaintiffs moved present application under order 26 Rule 9 of CPC and prayed for appointment of TILR as Court Commissioner for the joint measurement of land of themselves and land of defendants. Defendants filed say and contended that apparently the possession is in dispute and there is no dispute of boundary. The suit being for simplicitor injunction, present application is nothing but attempt of collection of evidence, finally they prayed for rejection of application.

2. Perused record. Heard both sides at length. It reveals that this is a suit for simplicitor injunction on the basis of ownership and possession. Plaintiffs have specifically demonstrated four boundaries of suit property Gat No. 490 after selling out 40 R land. Even he claimed his possession over entire suit property area as shown in plaint map. They have only grievance of obstruction by defendants to their peaceful possession.

3. Plaintiffs have to prove their case on their own footing for relief of permanent injunction. Though defendants pleaded different four boundaries of their land than their sale deed, it is not going to defeat the suit of plaintiffs since plaintiffs are confront over

their specific possession. Plaintiffs have to prove only the alleged obstruction by defendants over their specific possession of suit property on the basis of ownership. It is nowhere case of plaintiffs that defendants made any encroachment. In such circumstances I do not find any boundary dispute of suit property.

4. The joint measurement would only amount to collection of evidence to clarify whether plaintiffs have possession over suit property or not. As such it is not fit case to appoint Court Commissioner for joint measurement since it would cause collection of evidence.

5. Parties can not use the process of Law as a tool for collection of evidence in view of Order 26 Rule 9 of CPC. Hence the application is liable to be rejected. Hence I passed following order :

ORDER

1. The application (Exh. 36) is rejected.

Tirora
Date : 30/08/2021

(V. G. Karmore)
Civil Judge (Jr.Dn.) Tirora.