

Order Below Exh.No.21

(Passed on 10-11-2022)

1] By this application, the plaintiff is seeking appointment of Cadestral Surveyor as a Court Commissioner to measure the land of plaintiff and to submit the report under ***Order 26 Rule 9 of the Code of Civil Procedure, 1908.***

2] Read application and say. Heard, Shri. R.L. Limbulkar, the learned advocate for the plaintiff and Shri. O.S. Raut, the learned advocate for the defendant. Perused record of the case.

3] It is contented by the plaintiff that he has filed the suit for a permanent injunction, contending that the plaintiff is the owner and possessor of 70 R agricultural land in Gat No. 02. He further contended that the defendant is trying to encroach on the land of the plaintiff from the western side. The defendant is selling his land on Rs.100/- stamp papers to other persons. Therefore, no balanced land has been left with the defendant. Therefore, to avoid controversy between the parties, it is necessary to measure the land of the plaintiff and fix boundaries.

4] Per contra, the defendant resisted the application on the grounds that the suit is for a permanent injunction. At this juncture, this application cannot be considered. The application is not tenable. Hence, prayed to reject the application.

5] On perusal of the plaint, it appears in the prayer clause that the plaintiff claimed a permanent injunction against the defendant as the defendant is obstructing the plaintiff's possession and ownership.

6] After going through the claim of the plaintiff, it does not appear that there is a boundary dispute pertaining to the removal of encroachment. But the claim of the plaintiff is solely based on

Reg.Civ. Suit. No.69/2015
Kishan Vs.Ramrao

independent footing and the plaintiff is at liberty to discharge the burden cast upon him by leading cogent evidence to that effect. The suit is for a permanent injunction against the defendant, prohibiting him from obstructing the possession and ownership of the plaintiff. The nature of the suit is different. As such, there is no need for utilizing Court machinery to appoint Court Commissioner for collecting evidence for discharging the burden of proof. The attempt of plaintiff in this application is nothing but the collection of evidence through the Court machinery. Under such circumstances, I do not find substance in the application for appointing TILR as Cadastral Surveyor. Hence, I pass the following order.

ORDER

The application (Exh.21) is hereby rejected.

(Order is dictated and pronounced in open Court.)

Place : Partur
Date:- 10-11-2022

(Rahul B.Suryawanshi)
Jt.Civil Judge (Jr Div.)
Partur.

CERTIFICATE

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

Name of the Stenographer : R.B. Dukare
Name of the Court : C.J.J.D. and J.M.F.C. 2nd Court, Partur.
Date : 10.11.2022