

MHKO070009342023



Smt. Champabai Shankar Kamble and others
V/s.
State of Maharashtra and others

ORDER PASSED BELOW EXH. 22 IN
REGULAR CIVIL SUIT NO. 110/2023

1] Defendant No. 3 has taken out present application for appointment of T.I.L.R. as Court Commissioner for measurement of Northern side 1660 sq.ft., open space out of total area of 12200 sq.ft. In C.T.S.No. 2725, at Jaysingpur. Measurement of the counter claim property is sought through commissioner. The details of property are mentioned in para No. 1 of present application. The commission is sought for ascertaining any encroachment over it for fixing wire fencing around above referred counter claim property, in order to avoid any further encroachment over it.

2] The application is sought to be allowed as per provisions of Order 26 Rule 9 of Code of Civil Procedure. According to defendant No. 3, the above portion of play ground is allotted to them on lease order dtd. 18/01/2021 by defendant No. 1, Collector

Kolhapur.

3] According to defendant No. 3, for maintenance, repair and protection of play ground area, it is obligation on them to protect it, from any encroachment. For that purpose compound is required to be made to said property, by determining the exact portion of defendant No. 3's possession. They have already paid fees of Rs. 24,000/- required for measurement with concern office on 23/02/2023. The measurement was accordingly proposed on 9/5/2023 but due to filing of suit, it could not be completed, hence by present application they are seeking same relief, it be allowed accordingly.

4] Plaintiffs by way of detail reply vide Exh. 29, oppose the application and submitted that, defendant No. 3 is having no any right for appointment of commissioner. They can not take assistance of court to collect their evidence. According to plaintiff, defendant No. 3 is having no any concern with the counter claim property so no question for it's measurement, fixing boundaries or removal of encroachment over it arose. For all above counts, application is sought to be rejected.

5] Heard both sides. Gone through record and proceedings. Following points arise for my determination to which I have recorded my findings thereon along with detail reasons to follow.

Sr. No.	POINTS	FINDINGS
1.	Whether defendant No. 3 is entitled for relief sought ?	... In the Affirmative
2.	What order?	... As per final order.

REASONS

AS TO POINT NOS. 1 and 2

6] After perusal o plaint, it appears that, it is case of plaintiffs that, nearabout 100 families are residing in suit property (belonging to defendant No. 2) since prior to 35 to 40 years. According to them, lease of the suit property, where plaintiffs are residing, granted by defendant No.1 in favour of defendant No. 2, is already extinguished on 3/6/2015. Thus extension order dtd. 18/01/2021 and consequential agreement executed by defendant No. 1 in favour of defendant No. 3 is void abinitio and required to be cancelled. It is also prayed that, suit order dtd. 18/01/2021 be declared as not binding on residents of Ramnagar. Thus, they have challenged the above action of defendant Nos. 1 to 3 alleging them to be arbitrary ones.

7] Plaintiffs in addition to above, sought perpetual injunction restraining defendant No.3 from causing obstruction to plaintiffs peaceful possession on suit property as well from closing road passing from suit property and causing damage to underground

sewage line and water line passing from suit property or from entering in suit property, forceably.

8] According to defendant No. 3, as per their Written Statement and counter claim at Exh. 20, they are tenants of suit property (counter claim property), which is a play ground. They have received lawful possession of counter claim property, since 2000 and is yet in continuation. Their possession is unobstructed. As per order dtd. 28/01/2000 and subsequent lease deed bearing No. 6560/2022, entry of defendant No. 3's name in property card of suit property (counter claim property) is in existence.

9] Considering above facts on record it appears that, defendant No. 3 apparently is having some documents on record which shows their possession over counter claim property. They had already applied to concern T.I.L.R. for measurement of counter claim property, by depositing requisite fees.

10] In my opinion, considering above facts on record, local investigation for purpose of ascertaining exact position over and besides the counter claim property seems to be necessary. It can be allowed by court as per Section 75 read with Order 26 Rule 90 of Code of Civil Procedure. Thus, appointment of court commissioner for measurement of counter claim property for ascertaining factual position over there and for ascertaining any encroachment over there

is requires to be allowed.

11] In my opinion, the TILR, an expert in said field who also is an independent person will be suitable to act as commissioner under Order 26 Rule 9 of Code of Civil Procedure. In my opinion, appointment of TILR as commissioner will not cause any harm or prejudice to plaintiffs. On the contrary commissioner will bring exact position on suit property/counter claim property before court in respect of possession over there. Defendant No. 3 has already shown their willingness to pay the charges or fees of commissioner by depositing it with concern office, prior to suit.

12] Thus, considering the dispute between parties to suit and the reasons for which commission is sought by defendant No. 3, if commissioner will be appointed, his report will be helpful and relevant for decision of fact in issue. It is not going to assist defendant No. 3 for collecting the evidence because his report will be considered by court subject to his cross examination by the plaintiff. For all above reasons, I proceed to pass following order.

O R D E R

- (1) Application Exh. 22 is allowed.
- (2) T.I.L.R. Shirol is hereby appointed as Court Commissioner,
- (3) He shall depute any subordinate person to visit counter claim property, which is mentioned in para No. 1 of

present application in detail and carry out measurement of said property and submit his report showing the exact position over there within one month from today.

- (4) Defendant No. 3 is directed to deposit requisite court commission fees in the office of T.I.L.R. Shirol and submit copy of plaint, counter claim, relevant documents there within eight days from today. The concern office shall adjust the earlier fees if any paid by defendant No. 3, for said measurement.
- (5) T.I.L.R. Shirol is hereby directed to submit his report within a period of one month from today,
- (6) Issue commission writ accordingly.

Sd/-

(B.A. Gaikwad)

Civil Judge Senior Division,
Jaysingpur.

Date : 03/01/2024.