



Vishwanath Khandare Vs. Shankar Khandare

CNR - MHKO130008242016

## **ORDER BELOW EXH. 46 IN R.D.NO. 16/2016**

1. This application is filed by the J.D. for demarcation of property coupled with other relief which was subject matter of R.C.S.No.35/2007 (decided on 19/06/2011) by appointment of court commissioner.

2. According to J.D., compromise decree passed in R.C.S.No. 35/2007 is required to be modified as he is deprived from the share. It is prayed by this application to demarcate the entire suit property. It is also prayed by this application that, certain other inspection as to construction of shade, it's completion is required to be conducted as to easementary rights of parties and as to question of future safety of parties. By this application, it is also prayed that he is ready to bear the costs of commission work.

3. This application is opposed by the D.H. submitting that, earlier by appointing Court Commissioner and based upon his measurement compromise decree was executed. The said decree is binding upon the J.D. Thus, again there is no need to appoint Court Commissioner. It is submitted that, again for the same purpose if Commissioner is appointed then complication as to dispute will arise in the decree. As per the D.H., J.D. has breached the terms and conditions of the compromised decree by erecting the tin shed construction 4 to 5 feet in the premises of D.H., which amounting to encroachment upon the property of D.H. Now, D.H. has submitted the evidence affidavit and the proceeding is for cross-examination and just to prolong the matter, this application is filed. Hence, prayed to reject the application.

4. Heard JD in person and ld advocate of the DH. Perused

earlier compromise decree, relief claimed in this application with relief prayed in the decree. Admittedly, the suit R.C.S.No.35/2007 resulted in compromise decree. Since year-2011 till filing of this decree, the question as to demarcation is not raised by the J.D. Thus, prayer of J.D. for joint measurement to demarcate the suit property is irrelevant as the decree is binding upon him. Hence, the said prayed is rejected.

5. So far as the relief claimed in the decree as to encroached shed construction and partial relief of this present application as to easementary rights and question of safety is concern, local inspection can be carried out by appointing Court commissioner. In the result, application is partly allowed. Hence, following order is passed.

**ORDER**

1. Prayer of the J.D. for demarcation of property which was subject matter of R.C.S.No.35/2007 is rejected.
2. Prayer of the J.D. as to local inspection as to the status of shed construction, coupled with easementary rights and question of safety, is granted.
3. Court commissioner is directed to carry out local inspection of shed construction along with its status and submit his report that whether the shed construction is in accordance with the terms and condition of decree or otherwise. So also, the commissioner shall make local inspection as to easementary rights of parties and question of safety with regard to said shed construction and submit his detailed report within 2 months from the receipt of the writ.
4. Parties to suggest the name of commissioner.
5. Expenses of the commissioner shall be paid by the J.D.
6. Issue writ accordingly.
7. No order as to costs.

Kagal  
Date:- 19/11/2022

(B.D.Gore)  
Civil Judge Junior Division,  
Kagal.