

MHKO150002172013



R.C.S.No. 84/2013
Ravindra vs. Sarika

ORDER PASSED BELOW EXH. 62

This is an application filed by plaintiff for appointment of court commissioner under Order XXVI Rule 9 of Civil Procedure Code.

2. According to plaintiff, he has filed present suit for perpetual injunction and for mandatory injunction that is removing encroachment which was made by defendant in Lane (bol).

3. According to plaintiff, there is Lane (bol) situated between the property of plaintiff and defendants. The defendants by committing encroachment made construction in Lane (bol). Therefore, plaintiff has filed present suit for mandatory injunction. For showing the portion of encroachment, it is necessary to appoint court commissioner for measurement of encroachment. In this circumstance, plaintiff has filed present application. He lastly prayed for allowing application.

4. The defendants have filed their say at Exh. 64. They denied all allegation, pleading and prayer of plaintiff. According to them, the plaintiff himself has committed encroachment and made construction in property. There is no Lane (bol) situated which was stated by plaintiff. The application is not maintainable. The plaintiff has filed present application for collecting evidence. They lastly prayed for rejection of application.

5. Heard learned Advocate Shri. A. G. Deshpande for plaintiff and Advocate Shri. D. J. Desai for the defendant.

6. Perused application, say and record.

7. On perusing plaint it appears that, the plaintiff has filed present suit for mandatory injunction that is removing encroachment which was made by defendant. The plaintiff on affidavit pleaded that, the defendant has made construction in Lane (bol). The plaintiff has right to use that Lane (bol). The plaintiff requested defendant for not committing encroachment or removing construction. But, they refused request of plaintiff. Thus, from the affidavit of plaintiff it comes on record that, the defendants have made construction in Lane (bol) by committing encroachment.

8. On perusing the decree passed in R.C.S. No. 60/2012, it appears that, the Lane (bol) is situated on the western side of plaintiffs property and on the eastern side of defendants property. On perusing the sale deed which was executed in favour of defendant vide R.E. No. 298, dated 14.03.2013 and 341, dated 07.04.2011 it appears that, the Lane (bol) shown in eastern side of defendants property. These circumstance shows that, there is Lane (bol) present between the plaintiff and defendants property.

9. The plaintiff has filed present suit for mandatory injunction. For showing the encroachment it is necessary to appoint the court commissioner. The prima- facie it appears that, there is Lane (bol) is present. For showing the portion and situation of properties and for showing encroachment if any made by defendant, it is necessary to appoint court commissioner. Hence, in this circumstance the application needs to be allowed.

10. Considering all above discussion I am coming to conclusion that, the appointment of court commissioner that is Dy. S. L. R. Ajara is necessary to appoint for the purpose of elucidating matter in dispute. At this stage, I am coming to conclusion that at the time of measurement of

Lane (bol) it is necessary to measure property of plaintiff and defendant for deciding encroachment if any committed by defendants. At this stage, it is necessary to exercise power under section 151 of C. P. C and to appoint court commissioner for measurement also in respect of plaintiff and defendants property. Hence, I pass following order,

Order

1. The application is allowed.
2. The Dy.S.L.R., Ajara is appointed as Court Commissioner for joint measurement of Grampanchayat milkat no. 476, 470 and 470/3 which is situated at village Pernoli, Tal. Ajara, Dist. Kolhapur.
3. The court commissioner is directed to measure the property that is Grampanchayat milkat no. 476, 470 and 470/3 jointly and show situation of that properties along with Lane and show whether any encroachment which is committed by parties on Lane if any and submit report along with the map within 3 months.
4. The plaintiff is directed to bear the expenses of court commission, provide all the necessary documents and all necessary facilities to the court commissioner.
5. The court commissioner is liberty to consider Grampanchayat milkat extract and title documents of parties if any.
6. Writ be issued accordingly.
7. No order of costs.

Date : 05/12/2022.

(S. P. Jadhav)
Civil Judge J.D., Ajara.

Certificate

I affirm that the contents of this P.D.F file Judgment / Order are same, word to word, as per the original Judgment / Order.

Name of the Stenographer	Mrs. Y.S. Chavan
Name of Court	C.J.J.D. Ajara
Judgment / Order dictated on	05-12-2022
Judgment / Order typed on	05-12-2022
Judgment / Order signed by the P. O. on	05-12-2022
Judgment / Order uploaded on	06-12-2022