MHKO150002882020

R. C. S. No.36/2020

Mrs. Anuradha Ghevde & Anr.

Versus

Smt. Sushila Kamble & Ors.

Order below Exhibit 26.

(Passed on 04/12/2020)

01. The plaintiffs have filed this application for seeking relief of appointment of Court Commissioner under Order 26 Rule 9 of Code of Civil Procedure.

02. Perused the application and say at exhibit 45. Heard both sides at lenghth.

03. In view of rival contentions following points arise for determination. The findings and reasons for the same are as under.

Sr. No.	POINTS	FINDINGS
1.	Whether the plaintiff has made out the case for appointment of Commissioner under Order 26 Rule 9 of CPC ?	In the negative
2.	What order ?	The application is rejected.

: R E A S O N S :

04. Plaintiffs aver that defendants No.1 and 2 have appeared in the suit after service of notice. After hearing both sides on the ad interim injunction application (Exh.21), the Court extended the order of ad interim injunction restraining restraining the defendants from raising any construction over the suit property. Despite that the defendants continued to obstruct the ingress of plaintiff by putting construction

material in the way for raising shed construction. Defendants also restrained the plaintiffs from taking photographs of the site. When the plaintiffs approached police, police directed them to approach Civil Court. Hence, they have filed application at Exhibit 26 for appointment of Court Commissioner to bring the real position on the suit property.

05. The defendants filed their say (Exhibit 45) and strongly opposed the application. They submitted that, they are raising construction over their own land and they are enjoying this property which is continuously in their possession and ownership since long. Plaintiffs themselves are confused about their boundaries and with a view to grab the land of defendants, they have filed the present suit and this application. By the present application the plaintiffs are trying to collect the evidence. Hence, this application is not tenable in the eyes of law. The plaintiffs are misleading the Court and they have got the ad-interim injunction order by concealing the real facts. Hence, the application is liable to be rejected.

06. This is a suit for demarcation of boundaries. The plaintiffs contended that they are the owners of block No.867/2 and 864/3 while defendants are the owners of block No.1013. Plaintiffs further averred that they have executed measurement vide Register No.4/23-02-2004, but, the same is not registered with the Revenue Department. Block No.1013 is divided in to two parts by a road from Kolhapur to Ajara. Block No.867/2 is situated on the northern side of the block No.1013 and is rented to a third party. Block No.867/3 is situated on the southern side of block No.867/2 and block No.1013 is on the western side of it. Now, the plaintiffs have claimed that they are using a way from western side for ingress of their block No.867/3, on southern side of which block

No.1013 is situated. Plaintiffs in the present application have specifically stated that the defendants are obstructing their ingress creating hurdle in the way by putting stone and other construction material. However, the defendants have clearly stated in their reply to this application that they are raising construction in their own block No.1013 and they are ready to remove the construction if found illegal or encroachment upon the land of plaintiffs. The specific averment of plaintiffs about obstruction by putting construction material by defendants itself shows the situation on the spot or suit property. Hence, for elucidating this matter in dispute local investigation is not necessary. Defendants have submitted that plaintiffs themselves are confused about their boundaries. Plaintiffs have filed this suit for demarcation of boundaries. It is for the plaintiff to prove his possession viz-a-viz obstruction by the defendant. The court machinery cannot be used for collection of evidence by any side. Therefore, the application deserves to be rejected. Hence, the point is answered accordingly. In result the following order is passed.

O R D E R

Application stands rejected. C.O.A.

DISTRICT COURTS MAHARASHTRA

Digitally signed by Dhananjay Tatyasaheb Patil
Date: 2020.12.04 15:25:49 +0530

Place: Ajara.
Date: 04/12/2020.

(D. T. Patil)
Civil Judge Jr. Division,
Ajara.