

Regular Civil Suit No : 13/2014

ORDER BELOW EXHIBIT NO. 24

01. This is an application below O. XXVI Rule 9, Civil Procedure Code, 1908, filed by the plaintiffs. The defendants have filed their Say at Exhibit no. 25. perused the application and Say. Heard both the parties.

02. The contention of the plaintiffs is that, they are the owner of the suit property bearing Gat no. 208. Gat no. 206 is adjacent to it and the same is "Gairan". The defendants are contending that there exists a road since long through Gat no. 208 used by all the villagers. The plaintiffs are denying the said fact. Hence, bring the said fact before this Court, the plaintiffs seek to appoint a Court Commissioner. The plaintiffs seek to measure the Gat no. 208 and Gat no. 206 through the Commissioner.

03. The defendants in their Say, have vehemently opposed the application. The defendants oppose the application on the ground that the application is filed to collect the evidence. They further contend that, the Gat no. 206 is admittedly a "Gairan" land vested with Government. The plaintiffs have no right to get it measured. Hence, they pray for rejection of the application.

04. First of all, it is to be noted that Issues are not settled in the instant case. The Hon'ble Bombay High Court in a case reported in **Ramkrishna Santu Kakkad V/s Reojee Sahadu Kakkad, 2013(11) LJSOFT 145**, has held that a Court Commissioner can not

be appointed before framing of issues. Stage of the proceeding for appointment of Court Commissioner is premature. In the instant case also Issues are not settled. Hence, the present application is premature in the light of the above cited Judgment and at this stage of the trial or proceeding it would not be wise to appoint Court Commissioner.

05. Another important aspect brought rightly before me by the Ld. Adv. for the defendants is that the plaintiffs seek to appoint an Advocate as Court Commissioner. Considering the nature of the commission work, the plaintiffs should have opted for execution of the said work by the appropriate revenue officer. The plaintiffs are not seeking it. Therefore, the sole purpose of the plaintiffs behind filing this application is to prolong the hearing of the application of Exhibit no.5 as the plaintiffs have already obtained restraining orders from this Court. From the the perusal of the record placed before me, I am compelled to honour the contention of the defendants. So also in the light of the above referred judgment, the application deserves to be rejected. Hence, I pass the following order-

ORDER

1. The application is rejected with costs.

Radhanagari.

sd/-

Date :- 30/12/2014.

(A. S. Atre)

Civil Judge, Jr. Dn., Radhanagari.