



ORDER BELOW EXH. 49

This is an application by defendants 1 to 3 praying for the appointment of court commissioner. As per defendants the suit is for partition. The property at C.S.No. 6 of village Masurle, Tal. Radhangari is subject matter of present suit. However, plaintiff has described the same property as on constructed house admeasuring area 700 Ft. Before filing suit the house standing in C.s. No. 6 was not old construction. Defendants 1 to 3 have spent an amount of Rs. 50,000/- to 60,000/- and constructed Gobargas plant , bathroom, two new rooms. They have also constructed the floor with tiles. Thus, the valuation of property at C.S. No. 6 has gone above Rs. 5,00,000/-. Despite, with a view to avoid the payment of court fee, plaintiff has described the said property as old house and he has valued it at Rs. 90,000/-. Thus, present application to bring on record actual factual position of suit property.

2. Vide his say at Exh. 50 plaintiff has strongly combated the application contending its content as false and frivolous. As per plaintiff the suit property is properly valued. Further, the appointment of court commissioner would amount to collection of evidence. Ultimately, he has prayed for rejection of the application.

3. Heard both sides. Perused record. While deciding instant application it is incumbent to see the reason cited by the defendants for the appointment of court commissioner. In paragraph No. 2 of the application defendants have described the improvements caused by them in suit property and also the expenses incurred. However, in paragraph No. 3 they have specifically contented that with a view to

avoid the payment of court fee plaintiff has undervalued the suit property. Further, they have also raised the objection pertaining to valuation of suit property vide their written statement.

4. In the light of this reason it is pertinent to note here that, if defendants desire to bring on record the actual valuation of the suit property, they can do the same by getting suit property valued from the office of Sub Registrar or through any authorised valuer. Thus, the appointment of court commissioner for the purposes of valuation of suit property is not proper.

5. Apart from that, defendants have contended that they have constructed two rooms, bathroom, gobargas and have also changed the tiles in the suit properties. And to bring on record all these facts defendants are calling for the appointment of court commissioner. As defendants have come with the theory of subsequent developments caused by them in the suit property, they can very well establish these developments with the help of independent evidence such as, calling witnesses, bills etc. Just to bring on record the developments in suit property, court commissioner can not be appointed. Further, even if for the sake of moment defendants contention is accepted and the court commissioner is appointed as prayed, in that case also such an appointment would result in to collection of evidence pertaining to the construction of rooms, gobargas etc. Thus, considering the peculiar nature of the suit, and in view of the aforesaid discussion this court is of view that the present case does not warrant appointment of court commissioner. Hence, following order is passed :-

Order

Application is rejected.

Date: 03/11/2018

(M. H. Shitole)
C. J. J. D. Radhanagari
Kolhapur

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

Name of the Stenographer	U.S.Telang
Name of Court	Civil Judge, Junior Division & Judicial Magistrate, First Class, Radhanagari.
Date of Dictation	01/11/2018
Order signed by the P.O. On	01/11/2018
Order uploaded on	01/11/2018