



ORDER BELOW EXH.26

01) This is an application filed by the plaintiff for appointment of Court-Commissioner to make local investigations as per provisions Order 26 Rule 9 of Code of Civil Procedure.

02) It is submitted that the plaintiff has filed present suit for mandatory injunction in respect of the common wall in between the house of plaintiff and defendant no.1 having width three feet running from south to north situated at village Hangarga (Shirshi), Tq. Nilanga, Dist. Latur. It is further stated that, the house of plaintiff and defendant no.1 are adjacent to each other having common wall of width three feet, which is in dilapidated condition since earthquake of the year 1993. The plaintiff has requested the defendant no.1 to destroy the common wall and to construct new wall jointly. The defendant no.1 denied for the same by saying that he is not in a position to spend money. So, the plaintiff has constructed his house by leaving the common wall. The defendant no.1 also started construction of his house and he is going to put cement concrete slab on the dilapidated common wall. Due to the weight of the slab the said common wall may be ruined and there will be danger to the plaintiff and his family. So, the plaintiff requested the defendant nos.1 to 3 orally as well as by filing written application on 09/12/2019. The defendant no.1 has started his construction without obtaining construction permission from defendant nos.2 and 3. The plaintiff is having half share in the common wall. The defendant no.1 being a rich person has not paid heed towards the request of plaintiff and started construction to cause loss to the plaintiff.

03) It is further stated that, the said common wall is of 5 feet



width and 80 feet length, constructed prior to 100 years. The said common wall is in dilapidated condition and it may ruin in the rainy season. So, it is necessary to direct defendant no.1 to destroy the common wall. The present condition of wall needs to be brought on record by way of appointing court commissioner for local investigation. The report of court commissioner will be helpful to court to arrive at the just decision.

04) The defendant no.1 strongly opposed the application by filing say. It is stated that, the Grampanchayat Office has right to destroy the buildings, which are in dilapidated conditions. The plaintiff can file the report of Earthquake Inspection Squad in support of his case. The Grampanchayat can also inspect the suit wall under the provisions of Maharashtra Village Panchayat Act. It is further stated that, the plaintiff has not placed on record the construction permission to construct his own house. The plaintiff could not take the help of the court to prove his case. So, application be rejected.

05) Heard both sides. It is the case of the plaintiff that, there is common wall between the house of plaintiff and defendant no.1. the said wall is in dilapidated condition and needs to be destroyed. Now, the plaintiff desires to brought on record the dilapidated condition of wall through the court commissioner. It is the duty of the plaintiff to prove the facts, which are denied by the defendants. It appears that the plaintiff sought mandatory injunction in respect of the common wall. The burden to prove the condition of the wall is on the plaintiff. The plaintiff could not take the help of court order to prove his case.

06) It is settled law that, the commissioner could not be



appointed for collection of evidence. In the present case in hand the plaintiff is trying to collect evidence by way of appointing court commissioner, which is against the settled principle of law. The application filed by the plaintiff being devoid of merits is liable to be rejected. Hence, following order is passed to meet the ends of justice.

ORDER

Applications stands rejected.

Place:- Nilanga.
Date :- 02/02/2023.

(Anand S. Munde)
Jt. Civil Judge S. D. Nilanga.