

ORDER BELOW EXH.32 IN R.C.S. No. 97/2018
(Indrajeet Laxman Katle VS. Janardhan Manohar Katale)

1. The present suit for the perpetual injunction. Defendant has filed his written statement vide Exh. 20. Now by present application the defendant has prayed to appoint court commissioner for the inspection of suit property in order to bring on record the common Nalha and Bandh between the properties of plaintiff and defendant and other true facts.

2. It is contended in application that, the plaintiff is not owner and possessor of whole suit property. He is misleading the court. He has also not produced on record rough sketch map of the suit property. There was mistake while enforcing the De-fragmentation scheme. So, the excess land has mutated on the name of plaintiff than actual his possession. Some suit property is in the possession of defendant. But, by taking disadvantage of De-fragmentation scheme the plaintiff is trying to grab whole suit property. There is south north private common Nalha of approximate 3 foot in width between the property of plaintiff and defendant. There also electric poles upon said Nalha. Hence, there are boundary mark between plaintiff and defendant's property. So, for the conclusive decision of the case it is necessary to bring on record the true and actual facts upon the suit property. So, by this application the defendant prayed for appoint a court commissioner in order to carry out inspection of the suit property and to bring actual facts on record.

3. On the other hand, plaintiff filed his say below application and denied all the facts contended in application. According to him, the present application is moved in order to prolong the matter as well as to collect the evidence. Hence, he prayed to reject the application.

4. Perused the application and say. Heard learned advocate for both side. The Order 26 Rule 9 of the Code of Civil Procedure states the appointment of court commissioner for making local investigation. The court can issue court commission for the purpose of local investigation in order to elucidating any matter in dispute. The court commissioner also can be appointed in boundary dispute or in encroachment suits. But, the present suit is for perpetual injunction. The defendant is adversely claiming his possession upon some part of suit property. For supporting his this claim he intends to appoint a court commissioner in order to inspect the suit property as to bring on record the common Nalha between the property of plaintiff and defendant as a boundary mark.

5. It is settled principal of law that the court commissioner cannot be appointed for the collection of evidence. The defendant can prove his possession over suit property by leading evidence. For the purpose of ascertaining the possession of parties the court commissioner cannot be appointed. Hence, I proceed to pass the following order.

ORDER

1. The application stands rejected.

Date :12/12/2019

Sd/-
(S. D. Yadav)
Jt. Civil Judge Jr. Division,
Renapur.

C E R T I F I C A T E

I affirm that the contents of this P. D.F. file order are same word for word as per original order.

Name of Stenographer	: Dhanshri G. Bhadke
Court Name	: S. D. Yadav, Jt.C.J.J.D., Renapur.
Order Date	: 12/12/2019
Order signed by presiding officer on	: 12/12/2019
Order uploaded on	: 12/12/2019