



ORDER BELOW EXH.45 IN R.C.S.97/2018

Indrajit Laxman Katle Vs. Janardhan

Manohar Katle

(CNR No. MHLA130004372018)

1. Present application is filed by the plaintiff for issuance of Court Commission for measurement of suit land Gat No.29 and land of defendant of Gat No.30 through Deputy Superintendent of Land Records, Renapur. The defendant filed reply overleaf. Heard, learned advocates both the sides. Perused the records.

2. It is submitted by the plaintiff that, he is owner and possessor of suit property land Gat No.29 and defendant is owner of adjacent land Gat No.30. It is further stated that, defendant has falsely mentioned in his written statement that, he is owner of 1 H. 4r R. Land in Gat No.30 and he is in possession of 5 acre 21 R land. The plaintiff submits that, there is necessity to appoint Court Commission to measurement both the properties as there is boundary dispute between the parties.

3. It is replied by the defendant that, it is his case that due to mistake of entries in revenue record less area has been mentioned in the name of defendant's father. However, he is in possession 5 acres 21 Gunthe land. It is further submitted that, defendant has filed application below Exh.32 for appointment of Court Commission for inspection of common *nalla* and *bandh* between properties of plaintiff and defendant. However, said application has been rejected.

4. It is case plaintiff that, he and defendant are in possession of their respective lands and the defendant is trying to encroach upon suit land by demolishing boundary marks. On the other hand, it is case of defendant that, land Gat No.29 i.e.

suit property and Gat No. 30 have been allotted to the family of the plaintiff and defendant. The fathers of plaintiff and defendant effected partition to the extent of $\frac{1}{2}$ share each i.e. 6 Acres 4 gunthe each. However, this oral partition was not recorded in the revenue record and in consolidation scheme less area in Gat No.30 has been recorded in the name of father of defendant. It also case of defendant that, the father of defendant was in possession of 5 Acre 21 Gunthe land and defendant is now in possession of that land.

5. So, the case of defendant is actually about the possession over excess land than what is shown in revenue record of Gat No.30. The suit is for simplicitor injunction. It is not the case of plaintiff that defendant has encroached upon his land.

6. No doubt when there is question of encroachment joint measurement of the lands is necessary to elucidate the matter in disputed. In present case, as per the defendants the boundary between these two lands is as per actual possession of the defendant. Perusal of order below Exh. 32 shows that my learned Predecessor, after considering these facts had rejected the prayer of defendant to appoint Court Commission as it would amount to collection of evidence. In suit for simplicitor injunction, possession of land is important factor. If the Court Commission is appointed to measure this lands then it will amount collection of evidence of possession. In the reply of defendant, it is mentioned that, the defendant has no objection to issue Court Commission. However, position of trees, bushes, electricity pole, common nala, well etc should be shown in the measurement map. Considering the above discussed circumstances, even if the Court commission is appointed as

contemplated by the defendant then also it would amount to collection of evidence in respect of claim of the defendant. Present case is not about the encroachment over land. Therefore, it cannot be said that appointment of Court commission is necessary as per law laid down by Hon'ble Court. In view of above discussion I find that, appointment of commission is not necessary. Rather it would amount to collect the evidence. Therefore, the application deserves to be rejected.

ORDER

1] This Application below Exh.45 is rejected.

2] Cost in issue

Place : Renapur.
Date : 03/09/2022

(Y.A.Jadhav)
Jt.Civil Judge Junior Division
Renapur