

Order below Exh.89 in Regular Civil Suit No.31/2015.
(Anant..Vs..Bhimrao)

Perused application and say.

2. Application is filed by plaintiff for setting aside evidence close order dated 11/08/2022 passed below Exh.01 against him and permit him to examine the Court Commissioner as his witness. According to the plaintiff, in the present matter, the Court Commissioner was appointed and accordingly, he has filed his report. However, the defendants have denied the same. Therefore, they were directed to produce the photographs of the disputed land and affidavit. But they failed to do so and availed adjournments many times on that ground. On 11/08/2022 the plaintiff was suffering from illness and therefore, could not remain present before the Court and file an application for issuance of witness summons to the Court Commissioner. Hence, the Court closed his evidence. To prove the report of Court Commissioner, it is necessary to examine him for just decision of the case. If, the evidence close order is not set aside, he will suffer irreparable loss. Plaintiff has not made any delay intentionally for examining the witness. Therefore, prayed for allowing the same.

3. Defendants have objected the application and submitted that, already 03 months time is over after passing the evidence close order of the plaintiff. After appointment of Court Commissioner by the Court, the Court Commissioner without observing the real condition of disputed property, with an intention to aid the plaintiff has shown more area of road in possession of plaintiff than the length and width of the house of plaintiff. Court Commissioners report does not disclose factual situation. Therefore, there is no need to examine Court Commissioner and accordingly, prayed to reject the application.

4. Perused the application and say filed. Perused the record of the case. Application is supported by affidavit. Considering nature of suit, to decide the suit on merit, it is necessary to set aside the evidence close order passed

against plaintiff dated 11/08/2022 to enable the plaintiff to lead his further evidence. At the most if the application is allowed, suit will be decided on merits. Opposite party can be compensated by awarding reasonable costs. Hence, I proceed to pass following order:-

ORDER

1. Application at Exh.89 is allowed.
2. Order dated 11/08/2022 passed against defendant at Exh.01 is hereby set aside subject to costs of Rs.1,000/- to be paid to the defendants.
3. On compliance of the order, issue witness summons to the Court Commissioner as prayed subject to witness bhatta as per rules.

Place: Deoni
Date : 16/11/2022.

(Atish Pralhad Kholam)
Jt. Civil Judge, Jr. Division,
Deoni, Dist. Latur.