

ORDER BELOW EXH.48 IN RCS NO.472/2023
Vijay and others Vs. State and others.
(Order Passed on this Day of 2nd August, 2024)
CNRNO.MHLA170010412023

Defendant No.6 has filed application submitting that, defendant No.2 has passed order on 11.07.2022 for creation of road from the common bandh situated in between S.No.20 and 21. Plaintiffs have filed suit against the said order before this Court. Defendant No.6 had filed application before the Tahasildar (defendant No.2) on 06.01.2021 for getting road from the common survey number bandh situated in between S.No.20 and 21. There is nallaha duged towards western side of the land of defendant No.6. Therefore, during rainy season water is logged in the said nallaha and she cannot use the said road from said nallaha. On the other hand, the cart road can be created from the common survey number bandh to approach Ausa road which is fisible. It is necessary to bring on record the width of survey number bandh situated in between S.No.20 and 21. It is necessary to bring on record the exact situation on the survey number bandh till the Ausa road.

Therefore, it is prayed by defendant No.6 that, to bring the exact situation of survey number bandh situated in between S.No.20, 21, 22 whether there is road towards eastern and western side of S.No.22 and whether defendant No.6 has any other alternative road to approach her agricultural land. Hence, she prayed to allow her application for appointment of Court Commissioner to bring on record the exact position of the existence of road to approach her agricultural land and the

situation on the survey number bandh situated in between S.No.20, 21 and 22.

2. Plaintiffs have filed their say (Exh.54). They have objected the application on the grounds that, the application is based on false information and denied all the contents of the application of defendant No.6. It is further objected that, defendants No.6 has come with the application on record though no issues are framed by the Court, the evidence is yet to be led by plaintiffs. Therefore, the application filed by defendant No.6 is only with intention to collect evidence and it cannot be considered. Hence, plaintiff prayed to reject the application of defendant No.6.

3. In view of averments made by defendant No.6 and denied by plaintiffs following points arose for discussion and my findings thereon are as under:-

Sr. No.	Points	Findings
1.	Does defendant No.6 prove that, it is necessary to appoint Court Commissioner to find the exact situation on the disputed survey number bandh?	No.
2.	What order ?	The application is rejected

REASONS

4. Heard learned counsels for both the parties at length.

AS TO POINT NO.1:-

5. Perused the record. It reveals that, the matter was on the stage of passing order on Exh.5 and this application. Already order below Exh.5 is passed and the application below Exh.5 is allowed restraining defendants from creating any road on the common survey number bandh situated in between S.No.20 and 21. It is crystal clear at this stage of the suit that, this application filed by defendant No.6 is prior to framing of issues and leading of evidence by either of the parties to the suit. Therefore, this application is pre mature. It cannot be considered at this stage it amounts to collection of evidence. Defendant No.6 has an opportunity to file this application at the later stage. Therefore, I answer point No.1 in the negative.

AS TO POINT NO.2:-

6. In view of circumstances and facts discussed in point No.1 the application filed by defendant No.6 is liable to be rejected. Hence, in answer to point No.2, I pass following order:-

ORDER

1. The application is rejected.
2. No order as to costs.

Date :- 02/08/2024.

(P. I. Mokashi)
Civil Judge Senior Division,
Ausa.