

MHNB080005252019



ORDER BELOW EXH.16

(Passed on 03/12/2019)

By this application plaintiffs prayed for appointment of Court commissioner under Order 26 Rule 9 of C.P.C.

2) Plaintiffs submitted that, the present suit is filed by them for removal of encroachment, for possession and perpetual injunction. It is a contention of the plaintiffs that the case is pending for argument of interim order at Exh.5. It is his contention that in order to bring the real controversy before the Court, the Court commissioner for local inspection be appointed and thereafter the present suit be proceed further for decision in interim reliefs.

3) In answer to the present application defendants contended that the suit was filed on 27/06/2019, the case is pending for argument at Exh. 5. Plaintiffs have measured the suit land on 22/04/2016. The same date be shown as cause of action and therefore the suit is filed. As the suit was pending from last three years, no application is so moved by the plaintiffs. Such application is filed only in order to kill the time and to harass the defendants. The application is itself not tenable. Hence, prayed that it may kindly be rejected.

4) Perused the record. On perusal it appears that the application for interim relief at Exh. 5 is filed with the same prayer for which the suit is filed. It is prayed by plaintiffs, by application below Exh. 5, that the possession of land measuring 100 R in Gut no. 121 be given by removing the encroachment of the defendants and the perpetual injunction may be granted against them. Admittedly, the application below Exh. 16 do not contend any substantial grounds for appointment of Court commissioner. The real controversy which needs to be brought on record is neither explained nor explicitly mentioned. The application is filed at early stages of the suit i.e. before hearing application at Exh. 5.

5) As the suit is filed for removal of encroachment, the main relief in the suit is prayed as interim relief by way of application at Exh. 5. It is the settled position that the relief which could be granted at the final stage, need not to be granted at initial stages by way of interim reliefs. Otherwise, the further proceeding of the suit becomes futile. The recovery of encroached portion is the substantial relief in the present suit and such a relief could not be granted by way of interim order.

6) Moreover, the relief of injunction could be granted by way of interim reliefs. But for this reason even the appointment of Court commissioner for local inspection is not necessary. It is also well settled that the Court has to proceed with the interim applications on the basis of prima-facie case of the plaintiff. The substantial evidence or the expert opinion, evidence of commissioner need not to be taken into consideration at the time of decision of order below interim orders. The application filed by the plaintiff with the purpose to bring the real controversy on record is not within the meaning of prima-facie case. Therefore, such appointment of Court commissioner at this stage is not contemplated by the law. The appointment of Court commissioner at this stage is not warranted and

desirable. The plaintiff could avail such relief during trial. Therefore, at this interim stage such application could not be entertained. Hence, this application deserves to be rejected. Hence, I proceed to pass following order:

ORDER

- 1 Application is rejected.
- 2 No orders as to costs.

Date:- 03/12/2019

(R. B. Bahirwal)
Civil Judge, J.D.
Navapur.

CERTIFICATE

“ I affirm that the contents of this PDF file order are same word for word as per original order.”

Name of Stenographer	:	R. R. Nikam, Stenographer (Grade-III)
Court Name	:	Shri. R. B. Bahirwal, C.J.J.D., Navapur
Date	:	03/12/2019
Order signed by presiding officer on	:	03/12/2019
Order uploaded on	:	03/12/2019