

Order passed below Exh. 32

1- Perused application. Instant application filed by counsel for plaintiff under order 26 rule 9 of C.P.C. for appointment of court commissioner with a prayer to direct him to determine the boundary marks of land of plaintiff and also to determine the portions of land of plaintiff and defendants in field block no.751 situated at Lohgaon Tq. Biloli Dist. Nanded. According to counsel for plaintiff there are averments in the plaint that defendant no.1 has encroached upon the land of plaintiff and is doing excavation work there. According to him the defendant no.1 has denied the same in his written statement. Hence according to him to bring true facts to light it is necessary to appoint T.I.L.R. of Biloli as the court commissioner for carrying out measurement.

2- Instant application has been strongly opposed by defendant no.1 on the ground that there is no document filed on record by plaintiff that the Deputy Superintendent of Land Record showed his inability to measure the suit land. Further according to counsel for defendant no.1 the plaintiff, by virtue of this application is seeking to collect evidence through court commissioner. If this application is granted without adducing evidence plaintiff will get the relief automatically as prayed at serial no.2 in the plaint. Hence he is praying that instant application be rejected. The defendant no.2 to 8 have not filed any suit to instant application.

3- Heard both sides and perused the record. Present suit is for demarcation and fixation of boundaries of suit land and for mandatory injunction. It is apparent from the pleadings of both the parties that there is dispute pertaining to the boundaries of suit land. As per the authority of Honourable Bombay High Court in the case of Kisanlal Maniklal Vs.

Dinkar Yashwant 2004 (1) Mh. L.J. 138 it has been held that in cases of boundary dispute and encroachment a court should order local investigation. The said authority squarely apply to facts of present case. The objection taken by defendant no.1 that if instant application is allowed the prayer of plaintiff about demarcation and fixation of boundaries of suit field will be granted without evidence is not justified because the report of court commissioner is not directly admissible in evidence. Unless both the parties accept his report or any one of the parties proves his report, the said report cannot be relied upon. The T.I.L.R. is an expert in his field and is a government officer authorize to carry out measurement. His job is just to find out the actual position on the disputed side and submit his report. If he is appointed as court commissioner it will help this court in proper adjudication of the dispute between the parties. Hence in view of the above reasons and the cited authority, I hold that instant application deserves to be allowed. I, therefore, pass the following order

Order

- 1- Instant application for appointment of Court commissioner is hereby allowed.
- 2- The T.I.L.R., Biloli is appointed as the Court commissioner.
- 3- He to issue notices to the both the parties 15 days prior to execution of commission.
- 4- He to personally visit the suit site and measure the field of plaintiff and defendants. He should fix the boundary marks of the field of plaintiff.
- 5- He to prepare a detail report along with a clear map of the field of plaintiff and defendants which should clearly show the boundaries, encroached area if any, on the field of plaintiff. He to mention all

Steno PC, C.J.S.D., Biloli

objections in the report which may be raised by the parties at the time of execution of commission.

- 6- He to submit his report along with map within four weeks from the date of receipt of commissioner writ.
- 7- The plaintiff is directed to deposit commissioner's fee of the office of T.I.L.R., Biloli on or before next date.
- 8- Both the parties are directed to submit necessary documents pertaining to their respective fields with the court commissioner prior to commencement of measurement.
- 9- Commissioner's writ be issued after deposit of the commissioner fee.

Sd/-

(R. B. Bhagwat)

Civil Judge, Sr. Div.Biloli.

Dated : 02/02/2016.

CERTIFICATE

I affirm that the contents of this P.D.F. judgment/ order are same word to word, as per the original order.

Name of the Stenographer : S.B.Panchal

Court Name: Civil Judge Senior Division, Biloli.

Date: 02-02-2016

Judgment/Order signed by the Presiding Officer on 02-02-2016

Judgment/Order uploaded on : 05-02-2016