

MHND060011692020



R.C.S. No.155/2020

Sanjay & Ors. Vs. Shivraya & Ors.

ORDER BELOW EXH-46

(Date 09.11.2022)

Perused application. The plaintiffs state that, suit land consists of two adjacent numbers i.e. 604 and 604/1. After illegal acquisition, the revenue officers made mutation of 'Abadi'. However, there is no marking and specification on the spot. Therefore, quarrel started between the owner and others. After filing of suit, there is construction over the suit land. Thus, the plaintiffs have apprehension about illegal encroachment. The plaintiffs state that after rejection of temporary injunction application, the defendants encroaching day by day. Therefore, in order to bring actual position on record, Court Commissioner needs to be appointed for measurement. Therefore, Court Commissioner be appointed.

02. The defendants filed say vide Exh-49. The defendant Nos.01 to 03 adopted the same by pursis (Exh-52). The defendants state that, Government had acquired land from Gut No.604. Construction of hospital is completed. The plaintiffs have no locus-standi to file suit. The matter being alleged tenancy right, the Court has no jurisdiction. Hence, application be rejected.

03. Heard both sides. Perused record. The suit is in respect of declaration of ownership over the area 01 H. 79 R. of land Gut No.604, having old Survey No.296 of village Tamloor. It appears that, the defendant Nos.01 to 03 have denied the claim of plaintiffs so far as tenancy is concerned. The defendants pleaded that, the plaintiffs are not having possession over the suit property. The defendant Nos.01 to 03 are claiming

possession over 01 H. land of Gut No.604. However, it is their contention that, 04 Acre 19 Gunthas land of Survey No.296 is belonging to their forefather. Thus, the defendants contested the matter not only on the ground of ownership but also on the ground of possession. Today, one R.C.S. No.196/2022 is pending on board. It appears that, the defendant Nos.01 to 03 of present suit have filed said suit against other persons for declaration of ownership and perpetual injunction so far as 01 H. area of Gut No.604, having old Survey No.296.

04. As R.C.S. No.196/2022 is on board, I have an occasion and reason to see order passed on Exh-05 thereon. It appears from said order that, the present defendant Nos.01 to 03 though claimed temporary injunction in respect of 01 H. area, they have shown four boundaries in respect of 04 Acre 21 R. land. It is surprise to note that, these defendants did not made present plaintiffs as a party to said Civil Suit. One thing common in both these suits i.e. about Civil Suit bearing R.C.S. No.34/1997. Both parties have relied on the same to put-forth their contention. In R.C.S. No.196/2022, fact of one measurement map done by appointing Court Commissioner in R.C.S. No.108/2012 is mentioned.

05. In R.C.S. No.108/2012, one Gangabai Yedapalle i.e. plaintiff of R.C.S. No.34/1997 was the party. Present defendant Nos.05 to 07 have filed copy of Court commission done in that suit, on record. Thus, this fact is also relied by the parties. Therefore, from above facts, some conclusions came on record. There is dispute between parties about the ownership and possession of 04 Acre 19 R. land located in land Gut No.604. Present plaintiffs are claiming ownership on the basis of alleged tenancy certificate. Present defendant Nos.01 to 03 are claiming ownership and possession on the basis of decree passed in R.C.S. No.34/1997. Present defendants are claiming right on the basis of alleged acquisition by the Government of land located in Survey No.296. The defendants of R.C.S. No.196/2022 are claiming right of residence in Government 'Abadi' having Gut No.604/1. Thus, it appears that, present plaintiffs and the defendants are fighting for land in Gut No.604. Therefore, first of all it needs to be seen as to who is owner and possessor of the

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land located in Gut No.604. In view of previous map in R.C.S. No.108/2012, there is no need to appoint Court Commissioner in this matter. The dispute is in respect of who is owner and possessor of land located in Gut No.604. There is no boundary dispute. For boundary dispute, there must be certain area of party recorded in 7x12 extract. Here, the possession is in question. Therefore, there is no need to appoint Commissioner for measurement of suit property. Hence, application is liable to be rejected. Hence, I pass following order :

ORDER

01. Application stands rejected.
02. Dictated and pronounced in open Court.

Date : 09. 11. 2022.

(**N. S. Budruk**)
Civil Judge Sr. Division,
Biloli.

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C E R T I F I C A T E

I affirm that the contents of this P.D.F. file Judgment are same word to word, as per the original Judgment.

Name of the Stenographer : Syed Iftekharuddin Arifuddin

Court Name : Court of Civil Judge S.D. Biloli

Date : 09. 11. 2022

Judgment signed by the Presiding Officer on : 10. 11. 2022

Judgment/Order uploaded on : 10.11.2022