

MHNG080012332015



R.C.S. No.187/2015

Jagannath Vs. Omprakash

ORDER (BELOW EXH.116)
(Passed on 18.09.2023)

The plaintiff has filed present application for appointment of Court Commissioner i.e. Government Surveyor for measurement of suit field and to issue directions to the defendant not to obstruct the Surveyor while measuring the suit field.

2] It is contended that the plaintiff has filed this suit for cancellation of sale deed, injunction, declaration and possession. The suit is fixed for evidence. The plaintiff wants to ascertain boundaries of suit field and also wants to know as to whether anybody else has made any encroachment upon suit field. Therefore, the plaintiff applied to the office of Dy. Superintendent of Land Records, Parseoni for measurement of suit field vide measurement case No.1343/2017. The notices of measurement were issued to adjoining cultivators to remain present on spot on 10/07/2017. Surveyor Ku. N.A. Somkuwar started proceedings, that time defendant came on spot and obstructed the surveyor. The defendant stated that he is in possession of suit field and civil suit is pending in Court and he would not allow surveyor to measure the suit field. Hence, the surveyor could not measure the suit field. She prepared panchanama and submitted the same to her office. The plaintiff is owner of suit field and the defendant has no right, title or interest in suit field, however he trespassed in suit field. It is right of the

plaintiff to get his property measured and to get the boundaries fixed. If the suit field is measured, the nature of suit will not be changed and no prejudice would be caused to the defendant. Hence, the application.

3] The defendant filed his say at Exh.117 and denied the claim of the plaintiff in toto. It is contended that the application does not disclose that the defendant has made encroachment in suit field. Hence, the plaintiff has no right to know about encroachment made by any third person who is not defendant and for that purpose the plaintiff has to file separate civil suit. The plaintiff has made no case that the defendant has made any encroachment in the suit field. The plaintiff is trying to collect evidence which is not permissible under law. The application is not maintainable. Hence, prayed to reject the application with costs of Rs.50,000/-.

4] Heard the learned Advocates for both sides. They argued as per their application and say.

5] The provision under Order XXVI Rule 9 of the C.P.C. for appointment of Court Commissioner to make local investigation is directory in nature. Only when the Court finds a local investigation is necessary for the purpose of deciding the matter in dispute, it may exercise discretion for the appointment of court commission. It is settled position of law that Commissioner cannot be appointed to find out as to who is in possession of the suit field and such appointment cannot be made to collect evidence.

6] Perusal of record shows that the plaintiff has filed this suit for declaration, cancellation of sale deed and possession. There is no single word in the plaint that the defendant has made any encroachment in suit field. There is no prayer of removal of encroachment at the hands of defendant in suit field. It is the case of the plaintiff that he is owner of the suit field, which the defendant has specifically denied. The plaintiff has to prove his ownership on suit field. Thereafter, he will be entitled for the reliefs claimed in the suit. It requires trial and evidence. To prove his ownership, appointment of Court Commissioner for measurement of suit field is not necessary. The nature of suit does not require to make local investigation for deciding the matter in dispute. Therefore, I am not inclined to appoint Court Commissioner for measurement of suit field. Thus, the application of the plaintiff is devoid of merit and deserves to be rejected. The suit is more than 20 years old and therefore, considering the age of the suit, it will be just and proper to direct the parties to bear their own costs and expedite the suit. Hence, I pass following order.

ORDER

1. Application (Exh.116) is rejected.
2. The parties are directed to expedite the suit.
3. Parties to bear their own costs.

Date:-18.09.2023

(R.R. Sherekar)
2nd Jt. Civil Judge Junior Division,
Kamptee, Dist. Nagpur.