

MHNG090022222018



ORDER BELOW EXH. 21

The plaintiff have preferred present application under Order XXVI, Rule 9 of Code of Civil Procedure, 1908 (here-in-after referred as C.P.C.) to appoint a Court Commissioner.

2. The plaintiff submitted that he is the owner and possessor of land at survey No.170 to the extent of 3H59R as specifically described in para No.2 of the plaint. (here-in-after referred to the suit property). The defendants made an encroachment and construction upto the portion of land as described in the para No.2 of an application. It is further submitted that, in view of bring the above fact before court the spot inspection of the suit property through the Ld. Deputy Superintendent of Land Record is necessary.

3. The plaintiff shown ready and willingness to pay the necessary expenses towards the measurement. On that basis it is prayed to issue court commission as claimed.

4. The application is strongly objected by the defendant No.1 (i, ii), 5 and 6 by filing their say. It is submitted that, present application is not tenable, plaintiff should have relied upon his own footing. The plaintiff can not be permitted to bring the evidence with assistance of court. The

application itself shows that, it was preferred with intention to collect the evidence. The plaintiff ought to have get measured his property through government authority before instituting the suit. On that basis it is prayed to reject the application.

5. Heard Ld. Counsel for the plaintiff. None present from defendants. Perused the record.

6. At the outset, it is settled law that, under Order 26, Rule 9 of Code of Civil Procedure the court has the discretion to order the local investigation with intent to elucidate the matter. However, in the present application, the plaintiff is seeking an appointment for court commissioner to ascertain the encroachment, which is a disputed issue involved in the suit. Therefore on that basis, the present application cannot be allowed.

7. On perusal of record. It also appears that the present matter is at the preliminary stage, the plaintiff yet not lead any evidence. It is settled law that a court commissioner can be appointed to elucidate the matter and nor to resolve the matter. Therefore after leading evidence, a commissioner report found necessary then provision under Order XXVI, Rule 9 of CPC can be invoked. Hence, on that ground present application found to be preferred at a preliminary stage, therefore appears to be preferred as premature stage of the hearing.

8. Hence, on all above ground the application is found devoid of merit, therefore cannot be allowed. Accordingly, I pass the following order

ORDER

The application is rejected.

Saoner
Date:15/06/2022

(Santosh R. Bharad)
Civil Judge Junior Division,
Saoner

C E R T I F I C A T E

“I affirm that the contents of this P. D. F. File of order is word to word as per original order.”

Name of Stenographer: N. B. Payade

ENDORSEMENT

Case argued on	:	15.06.2022
Order dictated on	:	15.06.2022
Transcription ready on	:	15.06.2022
Order Checked and signed on	:	15.06.2022