

Reg.C.S. No.107/2019
Vikas .vrs. Sanjay

ORDER BELOW EXH.25

(Passed on 2nd November, 2020)

1] Plaintiff filed application for spot inspection of suit property. He submitted that he and his brother and cousin had ancestral property on City Survey Sheet No.76, City Survey No.6517. As per the above property, plaintiff had a house and open space. Door of the house is situated on Northern direction. The defendants dug same pit attached to the house of plaintiff. Therefore, foundation of plaintiff's house is opened. Because of act of defendant, right of plaintiff is infringed. Therefore, plaintiff filed suit for mandatory and perpetual injunction. The suit is pending. Therefore, till decision of suit, defendants be restrained to make construction and directed to plug the pit. He filed application on Exh.5. In order to show house and construction of defendant, plaintiff filed map of Engineer. The defendant appeared and denied the contention of plaintiff, therefore, in order to decide the application, legal problem is arose. Therefore Commissioner be appointed for inspection of suit site.

2] The defendants filed their say and submitted that plaintiff raised the dispute of boundary, suit site is adjoining to the plaintiff and defendants' land. As per the contention of the plaintiff, defendant made construction on land of plaintiff. The dispute is regarding boundary, therefore, plaintiff should have fixed his

boundary first. In R.D. 6/2019 measurement of defendants' land is taken place. The Commissioner gave her evidence. In that measurement, it is not found that defendant made construction on plaintiff's land. Record and possession of defendants is proper. Plaintiff was present at the time of measurement in execution petition. Notice was issued to plaintiff. He had not objected the measurement. The application filed by plaintiff is to collect the evidence. Hence, liable to be rejected.

3] Heard learned counsel for plaintiff and defendants. This application filed in order to help Court to give decision on Exh.5 as per Order 39 Rule 7 of Civil Procedure Code, therefore, Court has power to decide the application. During the hearing, plaintiff and defendants agreed to measure the suit land through one Engineer, namely, Rupesh Kesharao Chichghare. Therefore, considering the dispute between the parties and documents on record, I am of view that application is require to be allowed and measurement is require to be carried out through the help of Rupesh Kesharao Chichghare. Hence, I pass following Order :-

ORDER

- 1] Application is allowed.
- 2] Rupesh Kesharao Chichghare is appointed as Court Commissioner.
- 3] He is directed to measure the suit site and property No.6516 of defendants within 15 days.

- 4] He is directed to prepare map and detailed report.
- 5] Plaintiff and defendants are directed to supply necessary documents to Court Commissioner as well as in Court within 7 days.
- 6] Plaintiff and Defendants are directed to co-operate the Court Commissioner.
- 7] Plaintiff is directed to pay Court Commissioner's fee Rs.3,000/-.
- 8] Writ be issued accordingly.

Umrer.

Dt. 02/11/2020