

Regular Civil Suit No. 05/2014
CNR:MHNS13-000070-2014

Order Passed Below Exh. 5

Abhay Vs. Grampanchayat, Ozhar

This is an application filed by the plaintiff under Order XXVI Rule 9 of the Code of Civil Procedure for appointment of Court Commissioner.

2] It is the contention of the plaintiff that, defendants have illegally caused loss of Rs. 5,00,000/- to the plaintiff. Hence, the plaintiff has presented this suit against defendants for recovery of Rs. 5,00,000/- alongwith interest. On 18/11/2013 when the plaintiff was not at home, defendants illegally and without any right destructed the structure of his newly constructed storeroom and wall compound. It caused great damage to slab, walls, balcony, flooring of the original building as described in plaint para 1. The damage would also cause danger to the life of the plaintiff and his family who used to reside in the said building. Hence it has become necessary to repair said building. However, it is necessary to bring the actual position on the spot before the Court. Hence, it is necessary to inspect the suit property by appointment of Court Commissioner. As per the contention of the plaintiff, he is not trying to collect the evidence through the Court and no impediment will cause to defendants, if the application is allowed. Hence, the plaintiff prayed to allow the application.

3] Defendants filed their say to the present application vide Exh. 25 and thereby contended that, the plaintiff has filed this false and illegal

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application. The plaintiff has presented this suit in the year 2014 and the plaintiff has also filed some photographs alongwith list at Exh. 3/9 which clearly shows the actual position. The plaintiff is trying to collect evidence by way of this application. Lastly, he prayed to reject the application.

4] The present suit is filed by the relief of for recovery of Rs. 5,00,000/- alongwith interest. As per contention of the plaintiff, on 18/11/2013 when the plaintiff was not at home, defendants illegally and without any right destructed the structure of his newly constructed storeroom and wall compound which caused great damage to slab, walls, balcony, flooring of the original building. Hence, he prayed appointment of Court Commissioner to inspect the suit property in order to bring the actual position on the spot before the Court.

5] Perusal of written statement filed by defendants at Exh. 22 shows that, the plaintiff has removed the illegal structure in the suit property at his own costs. This shows that, defendants have not denied the fact that, the disputed structure is not in existence and it is removed. Perusal of record also shows that, the plaintiff has also filed the photographs of the suit property on record alongwith list at Exh. 3/9. The actual situation on the spot could be proved through said photographs and hence there is no need to appoint Court Commissioner to inspect the spot as prayed by the plaintiff. It is epochal to note that, application under Order XXVI Rule 9 of the Code of Civil Procedure is not meant for collection of evidence. It would not be worthwhile to appoint the Court Commissioner as it would not cause any impediment to defendants as

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prayed for by the plaintiff. Hence, the application is devoid of merit and deserves to be rejected. In result, I pass the following order,

ORDER

- 1] Application (Exh. 5) stands rejected.
- 2] Parties to take note.

Date : 19/03/2019

sdxxx
(S. N. Hurgat)
Joint Civil Judge Junior Division,
Pimpalgaon (B)