

ORDER BELOW EXH. 21

Vasant V/s Bharat and others

Read the application and say filed by defendants. Perused record. Heard both the Counsels.

2] This is a suit for injunction. Wherein application for appointment of Court Commissioner is filed. It is submitted that, the land of plaintiff and defendant adjacent to each other. By taking disadvantage of the situation defendant has encroached over certain portion of his land and trying to cultivate the grape garden. For cultivation of grape garden, defendant is trying to erect angle over the land of plaintiff and therefore, it is necessary to appoint Court Commissioner to ascertain whether, encroachment is made by defendant over the land of plaintiff. Hence, the present application.

3] By filing say at Exh. 25, application is resisted. Contention of defendant No. 1 is that, during the pendency of case, application for appointment of T.I.L.R. as a court commissioner is filed by the plaintiff. Same is allowed and report of Court Commissioner is on record. Suit is filed for injunction that, defendant be restrained from erecting angles for cultivation of grape garden over the land of plaintiff. It can be inferred from the recitals in the plaint that, according to plaintiff defendant has encroached over certain portion of his land. When, the case of plaintiff is of encroachment, it can be sourt out only at the hands of T.I.L.R. with the help of measurement. Perusal of the record shows that, it is already done.

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(CNR No.MHNS13-000412-2017)

Under these circumstances, in my view, the purpose of appointment of Court Commissioner is already served and therefore the application under consideration, became infructuous. Hence, for the reasons mentioned above and in view of report filed by Court Commissioner, following order is passed.

ORDER

- 1] Application Exh. 21 stands rejected.

Sd/-xxx
(Vijay C. Gawai)
Civil Judge Junior Division,
Pimpalgaon (B.), Tal. Niphad,
Dist. Nashik.

Date : 09/01/2019