

Order below Exh.115

1. Heard Ld. Shri. Patil adv. for plaintiff at length. He submitted that present application filed under Order 26 Rule 9 of Code of Civil Procedure by the plaintiff for appointment of T.I.L.R. as Court commissioner for measurement the field mentioned in application.

2. He further submitted that present suit is filed by plaintiff for perpetual-injunction alongwith to obtain possession over land encroached by defendant. He pointed that vide Exh.255 Court rejected the application filed by plaintiff and defendants for appointment of Court-Commissioner on technical ground on 02/04/2014. Therefore, after necessary amendment vide Exh.89 and necessary compliance, technical defects removed. Hence, plaintiff filed present application after necessary technical compliance for measurement of land bearing Gat no.8/1/A, 8/1/B, 8/2 and 1 situated at Kautkhede, Tal. Yeola. He submitted that if, Court commissioner appointed by Court the dispute between parties will be settled and it will also helpful to the Court for final conclusion of suit on merit. Hence, accordingly prayed for allow the application.

3. Heard defendants and their respective advocates. Adv. Shri. Dhande argued for defendant no.1 to 3. He submitted that necessary order may kindly pass. Other defendants also not opposed the present application.

4. I perused the record. It appears that plaintiff seeking measurement of suit-land mentioned in application and its sub-divisions.

5. No doubt, as per Order-26 Rule-9 of CPC, "Court may appoint

Court-Commissioner for local investigation to be requisite or proper for the purpose of elucidating any matter in dispute or of ascertaining the market value of any property, or the amount of any mesne profit or damages or anyone net profits, the Court may issue a commission to such person as is it thinks fit directing it to make the such investigation and to report thereon to the Court". After going through the plaint, it reveals that plaintiff alleges that defendant no.6 to 9 committed 0.010 R encroachment in his property. Said encroachment reveals by the plaintiff by measurement dtd. 09/10/2012. Plaintiff contended that the measurement already carried out on 09/10/2012. Though, Id. adv. Patil submitted that previous application for Court-Commissioner rejected by Court on technical ground, however, it appears that my Ld. Predecessor decided application on merit. Hence, I do not find any substance in the argument of Ld. Adv. Shri. Patil. Even, it is not contention of plaintiff that previous measurement dtd.09/10/2012 was not as per law. Hence, considering the purpose of said provision i.e. Order-26 Rule-9 of CPC, I do not find any purpose claiming measurement by the same authority without mentioning defects. Hence, contentions of plaintiff is need to be rejected as application do not deserve the merit. Hence, I pass following order,

- **ORDER** -

Application is rejected.

(**N.N. Chintamani**)

Date : 28/11/2017

Jt. Civil Judge, J.D. Yeola (Nashik).

CERTIFICATE

I affirmed that the contents of the PDF filed Judgment are same word to word, as per the original Judgment.

Name of stenographer : N.K. Vispute,
Court : Joint Civil and Criminal
Court, Yeola, Dist.Nashik.

Dictated on : 28/11/2017

Order signed by
the Presider Officer on : 14/12/2017

Judgment Uploaded on : 14/12/2017