

ORDER BELOW EXH 37

This application is filed by plaintiffs for appointment of TILR for making boundary marks by measuring land mentioned the application.

2. In brief facts of the application are as under :

The plaintiffs have filed present suit for seeking relief of declaration and injunction in the respect of land Gat No.7 adm. 01H: 45R situated at village Wadner Tq. Paranda Dist.Osmanabad. It is contended that, it is necessary to fix boundaries of the land of the plaintiffs which will help to decide the suit on merit. According to the plaintiffs, if the application is allowed, nature of the suit will not be changed. Hence, this application is filed with aforesaid prayer.

3. Defendants Nos. 1,2, 4 and 5 filed say below the application contending that the application is not tenable. It is contended plaintiffs have not explained the legal necessity for appointment of commissioner. Plaintiffs have not adduced evidence, but in order to collect evidence from the Court this application is filed, with bad intention, therefore, application be rejected.

4. The learned Advocate Shri. A.M. Shaikh for the plaintiffs has submitted as per contention of the application and relied on the following judgment of the Hon'ble Apex Court :

Haryana Waqf Board Vs. Shanti Sarup and Others in Civil Appeal No. /2008 (arising out of SLP) No.7510 of 2007 decided on 16 July, 2008 wherein the Hon'ble Apex Court has held, “*where the dispute is in respect of demarcation of land, it was appropriate for the Court to direct the investigation by appointing a local*

commission under Order 26 Rule 9 of the Code of Civil Procedure.”

5. On the other side learned Advocate Shri. Z.I. Choudhary for defendants has submitted application is not tenable and it is filed with an intention to collect the evidence therefore it be rejected.

6. I have gone through record. Admittedly, this suit is filed seeking relief of declaration of ownership as well as perpetual injunction. Defendants Nos.1, 2, 4 and 5 filed their written statement below Exh.30 and denied contents of the plaint. On 12.07.2019 issues have been framed below Exh.34. Plaintiffs have not been adduced evidence till today and filed present application on 04.01.2020.

7. The plaintiffs have come with the case that they are owner of the suit property, accordingly issue No.1 is framed. By way of this application plaintiffs want to appoint TILR for getting measured suit property and to fix boundaries of it. It is duty of the Plaintiffs to prove contention in the plaint by adducing oral evidence and producing documentary evidence. Plaintiffs have to prove their case independently. They should not take help of the Court to collect evidence. From the contention of the application it is clear that plaintiffs are collecting evidence by taking help of the Court. The plaintiffs have not come with the case of encroachment or there is no boundary dispute between the parties.

8. I have gone through the cited case of the Hon'ble Apex Court. As stated above there is no boundary dispute between the parties and plaintiffs have not come with the case of encroachment therefore, with due respect I have to state the facts of present application are different to the facts of the cited judgment hence, the

ratio laid down in the cited judgment is not applicable to decide present application.

9. In view of above reason, I do not find substance in the submission of learned advocate for the plaintiffs, accordingly pass following order.

ORDER

Application is rejected with costs.

Dictated and pronounced in open Court.

Dated: 17.03.2021

(Usha V. Indapure)
 Civil Judge S.D. Paranda.

CERTIFICATE

I affirm that, the contents of this P.D.F. file judgment are same, word to word, as per the original Judgment.

Name of Stenographer	--	Shri. Sayyad R.M. (Grade -III)
Court	--	Joint Civil Judge, Senior Division Paranda.
Date	--	17-03-2021
Order signed by the Presiding Officer on	--	17-03-2021
Order uploaded on	--	17-03-2021