

ORDER BELOW EXH.37 IN R.C.S.No.243/2013

Plaintiffs file this application for appointment of Court Commissioner under Order-26 Rule-9 of the Civil Procedure Code. As the dispute between parties in R.C.S.No.263/13 and in this suit is one and same. Here, plaintiffs pray declaration of ownership and possession over 02H10R portion in Survey No.90/1/E. In order to ascertain the existence of South-North cart way i.e. Pand situated towards the west of the suit land, the appointment of the Advocate Court Commissioner is prayed.

2. Defendants oppose this prayer stating that plaintiffs cannot ask appointment of Court Commissioner for collection of evidence. For visual inspection of the suit land there is no need to appoint Court Commissioner. Defendants have already alleged plaintiffs' encroachment over the land owned and possessed i.e. S.No.90/1/D by them. Considering fact and circumstances, rejection of the application is prayed.

3. Heard the learned Advocate Shri I.D.Shaikh for plaintiffs and the learned Advocate Shri N.S.Madhekar and Shri S.R.Kale for defendants.

4. As R.C.S. No.263/2013 between same parties, wherein, present defendants pray appointment of Dy. Superintendent of Land Records. Considering the nature of case it has been rejected. In this case what plaintiffs have prayed is that to bring on record the nature of the suit land i.e. whether there is existence of South-North bund, cart way i.e.pand its approximate width, trees grown over it the appointment of Advocate court commissioner is necessary. If all these particulars are brought on record, it would help to ascertain the existence of division of specific portion. It is

trite to say that appointment of Court Commissioner is not permissible for collecting evidence that which party is in possession of disputed portion. However, there can be no restriction to know more particulars about disputed property, its existence in relation to description given in the respective pleadings by appointment of court commissioner. Therefore, question of any prejudice or loss to defendants does not arise. The application needs to be allowed hence, following order is passed.

-ORDER-

1. Advocate Shri. V.D.Deokar is appointed as Court Commissioner, shall visit the suit land and submit a factual report whether there is existence of things as claimed in application Exh.37.
2. Plaintiffs are directed to deposit Rs.2000/two thousand as court commissioner fee.
3. Both parties are directed to remain present on the day fixed by the commissioner. Report is returnable on 03.01.2014.

Date :- 03.12.2013

(K. B. Chougule)  
Jt. Civil Judge,(Jr.Division).,  
Paranda