

ORDER BELOW EXH.43 IN R.C.S.No.243/2013 :-

This application is preferred by the defendant No. 7 & 8 seeking review of earlier order wherein Advocate court commissioner is appointed to bring on record factual position of the suit property. According to defendants plaintiffs have ownership over land Survey No.90/1/E ad-measuring 2H10R and the defendant No. 7 and 8 have ownership over 2H10R portion in Survey No. 90/1/D. There is south north cart way abutting the bund between two properties for which the Advocate court commissioner is appointed to bring on record the factual position of the cart way, bund its width and existence of trees etc. It is case of the defendants is that the plaintiffs have encroached upon land i.e. survey No.20/1/D to the extent of 15R. According to them there is no existence of cart way or bund in between Survey No. 90/1/D and 90/1/E. Therefore, instead of Advocate court commissioner if T.I.L.R. is appointed to measure both land then it will help to resolve the controversy. Seeking modification of earlier order the appointment of T.I.L.R. is sought in place of the Advocate court commissioner.

2. The plaintiffs file say at Exh.45. It is contended that there is no apparent error in order dated 3/12/2013. There is no provision of review as per Section 114 and order 47 of the Code of Civil procedure. There is no reason to review earlier order which is passed on merit and similar prayer of defendants is rejected. Defendants' application seeking the appointment T.I.L.R. as court commissioner in another pending suit i.e. RCS No. 263/2013 is rejected. Considering all this fact rejection of application is sought.

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

4. The defendant No.7 & 8 file a separate RCS No.263/13 before appearing in this proceeding. In the present suit the plaintiffs pray the declaration of ownership of the suit land and perpetual injunction. Plaintiffs' application at Exh.37 contains a specific prayer to bring on record existence of south north cart way in between Survey No. 90/1/D and 90/1/E. The measurement task of both these survey numbers is not assigned to the Advocate commissioner. As there is no boundary dispute therefore the measurement is not necessary. In the present suit there is no relief of recovery of possession, on the contrary the defendant No. 6 & 7 i.e. present applicants have filed suit for recovery of alleged encroached portion i.e 15R from the present plaintiffs. The detailed order dated 03.12.2013 passed below Exh.20 in RCS No. 263/2013 clearly shows that by filing a suit for the recovery of encroached area from defendants the plaintiffs cannot be permitted to recover possession of the land which was never in their possession in pursuance of registered sale deed. Alleging encroachment by adjacent owner a purchaser of immovable property cannot be allowed to seek time barred recovery of possession. In view of this there seems no substance in review application. As there is no apparent error or mistake which could result error of law, hence, following order is passed.

-ORDER-

Application is rejected.

(K.B.Chougule)
2nd Jt. Civil Judge, (Jr.Division).,
Paranda

Date :- 22.08.2014