

Order Below Exh. 17 in R.C.S. No. 96/2020

Vikas V/s. Baban

This is an application filed by defendants for appointment of Court Commissioner under O.26 R.9 of the Code of Civil Procedure (in short the CPC) for local investigation of the suit property.

2. Defendants came with the case that the plaintiff filed this suit for declaration and perpetual injunction. According to defendants the descriptions given by the plaintiff in respect of the suit property is totally wrong. By way of irrigation facility they developed the suit property, grew fruit trees like Guava, Mango, Pomegranate and chhikoo etc. They constructed residential house and farmpound over the suit property. There has been 8 R. open land towards the Northen side from center of the suit property. Therefore, to ascertain real situation of the suit property, this application needs to be allowed.

3. The plaintiff filed say at Exh. 23 and resisted the contents of the application. It is submitted by the plaintiff that commissioner can not be appointed for collection of evidence and prayed for rejection.

4. Heard Ld. Adv. P.M.Khade who assisted by Ld. Adv. V.T. Nazirkar for defendants and Ld. Adv. N.K.Patil for the plaintiff. Perused the material on record. O.26 R.9 of the CPC contemplates that Court Commissioner can be appointed for local investigation for the purpose of elucidating any matter in dispute, or for ascertaining the market value of any property, or the amount of any mesne profits damages or annual net profits.

5. Upon perusal of record, it reveals that the plaintiff purchased the suit property from the decree holder in the suit of RCS No.1076/2008 by executing registered sale deed dated 25/02/2020. According to defendants, since 2005 they have possessed the suit property and developed it. Photographs placed on record along with Exh. 27 are show that there was plantation of fruit trees, Farmpond and residential building. Hence, question arises that whether residential building falls within limit of the suit property. However, documents filed on record by defendants but those documents are not sufficient to ascertain real situation of the suit property. It is settled principle of law that for collection of evidence, court commissioner cannot be appointed. But, whenever there is doubt in respect of the suit property, it would be clear by appointing Court commissioner. Therefore, it is my considered view that, for the purpose of elucidating

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any matter in dispute, it is necessary to appoint court commissioner.

6. Considering facts and circumstances of the present case, it would be appropriate to appoint court commissioner, which would help to arrive at the proper conclusion. Hence, I pass following order,

ORDER

1. The application is allowed.
2. Ld. Adv. D. G. Poman is appointed as Court Commissioner.
3. Defendants are directed to deposit Rs.3,000/- towards the Court commission charges.
4. Court commissioner is directed to submit his report within along with map on or before 21/10/2020 without failure on his part.
5. Both parties shall remain present for local investigation as per direction of the Court Commissioner.

Saswad
Date:-21/09/2020

Sd/-XXX
(**Smt. D. M. Patil**)
2nd Jt. Civil Judge Junior Division
Saswad

CERTIFICATE

I affirm that the contents of this P.D.F. file Order is same word for word as per original Order.

Name of Steno : Mr. K. N. Chopade, (Grade 3)

Court Name : Smt. D. M. Patil
C.J.J.D. & J.M.F.C., Saswad.

Date of Order : 21/09/2020

Order signed by presiding officer on : 21/09/2020

Order uploaded on : 15/10/2020