

MHPU180003972020



R.C.S. No.62/2020
Dhula & Ors.
VS.
Revannath & Ors.

ORDER BELOW EXH.89
(Passed On 19/10/2024)

This is an application filed by plaintiffs under order XXVI rule 9 of the Code of Civil Procedure for appointment of Court Commissioner as under.

2. According to plaintiffs, they have instituted the present suit for removal of encroachment with perpetual injunction. Defendant nos. 3 to 9 who are holders of gut no. 528 encroached over gut no. 529 to the extent of 00 H. 14.5 R land towards eastern side. The holders of gut no. 517 i.e. defendant nos. 1 & 2 have encroached over gut no. 529 towards southern side to the extent of 00 H. 4 R land. The holder of gut no. 530 i.e. defendant no. 10 encroached over gut no. 529 to the extent of 00 H. 01.5 R towards northern side. Therefore, plaintiffs have filed this suit for removal of encroachment. Defendants have appeared and filed their written statement on record and refused to make encroachment over the suit property. Therefore, in order to brought real position on record it is necessary to appoint T.I.L.R., Daund as a Court commissioner for measurement of gut no. 529, 528 and 517 jointly. Hence, this application.

3. Defendant nos. 1 & 2 have filed their say at Exh. 91 and thereby strongly opposed the application moved by plaintiffs contending that, it is not tenable and maintainable in the eyes of law. As per the version of plaintiffs they have got measured the suit property from private surveyor. Wherein it reveals that, defendants have encroached over the suit property. It has also mentioned that, defendants have refused to remove the encroachment over the suit property. Another measurement bearing no.7013/2014 carried out on 14/12/2015. Therefore, on

06/04/2016 four boundaries have fixed. It clearly goes to show that, already measurement has carried out and four boundaries of the suit property have fixed. Despite this an application moved by plaintiffs so, it is not tenable and liable to be reject with cost.

4. Defendant nos. 4, 7 & 8 have filed their say at Exh. 92 and thereby strongly opposed the application moved by plaintiffs contending that, it is not tenable and maintainable in the eyes of law. According to them plaintiffs have measured their land vide measurement no. 7013/14. Plaintiff nos. 1 & 2 have alienated 2 R land to defendant no.11, 1 R. land to defendant no. 12, 2 R. land to defendant nos. 13 & 14, 2 R. land to defendant no. 15, 1 R land to defendant no. 16, 2 R land to defendant no. 17, 1 R land to defendant no. 18, 5 R land to defendant no. 19 & 5 R land to defendant no. 20. But the suit is relating properties of all plaintiffs which is the extent of 1H. 07 R. Plaintiffs have admitted that, there is a land of 32 R of defendant no. 21 and the portion of gut no. 529 is 1 H. 95 R as per 7/12 extract. Therefore, considering these things the application is not tenable and maintainable and liable to be rejected.

5. Perused the application and say. Heard both sides at considerable length. By filing this application plaintiffs requested to appoint T.I.L.R. Daund as a Court Commissioner to measure the suit property, in order to brought real position on record. Plaintiffs also given specific portions each defendants who has encroached over the suit property. Furthermore, defendants have denied the contents of the application and submitted that, already measurement carried out therefore, the present application is not lawful one and liable to be reject. On perusal of the entire facts and considering submissions advanced by both sides it appears that, the suit is at its initial stage. The trial is yet to be initiated. At this stage it would not proper to appoint T.I.L.R. for measurement carried out as per the version of plaintiffs. If it is allowed it will be nothing but the collection of evidence to which law never permits.

Therefore, considering these aspects I have not found any substance into the application of plaintiffs. Hence, in the interest of justice I, proceed to pass following order.

ORDER

- 1) Application stands rejected.
- 2) No order as to costs.

Daund.
Dt. 19/10/2024.

(Sharad B. Kaldate)
2nd Jt. Civil Judge (Jr.Dn.),
Daund.

CERTIFICATE

I affirm that the contents of this PD.F file, Order are same, word to word, as per the original order.

Name of the Steno :- Deepak A. Merukar, Grade-3
Court / Panel :- (Sharad B. Kaldate)
2nd Jt. C.J.J.D. & Judicial Magistrate
First Class (Court No. 2) Daund.
Order / Judgment date :- 19/10/2024.
Order / Judgment signed by :- 19/10/2024.
the Presiding Officer on
Order/ Judgment uploaded on :- 21/10/2024.