

CNR No.MHRG090005452015 R.C.S.No.49/2015

Aarvind Gokhale Vs. Aruna Jakula



**ORDER BELOW EXH.49**

This is an application filed by plaintiffs under order XXVI Rule 9 of Code of Civil Procedure for appointment of court commissioner.

02. Present suit is filed for removal of encroachment and for declaration. Plaintiff submitted that from the suit property i.e. Non-agricultural land plot no.1 Survey No.26, Hissa No.7 area admeasuring 0.2.44 R duplex bungalow, house no.282 area 2132 sq.ft. purchased by the plaintiff by registered sale deed from one Mr.George Varghese and Mrs.Daisy Varghese. The defendant no.1 was the owner of the said suit property prior to Mr.George Varghese and Mrs.Daisy Varghese. After verifying all the required documents plaintiff has purchased the suit property from Mr.George Varghese and Mrs.Daisy Varghese on 15.07.2011. After recording the entry on 7/12 extract when the plaintiff has applied for measurement of the suit property, he gets knowledge that, on the southern side of the suit property after selling entire plot, the defendant no. 1 had started illegal construction before selling the said plot to plaintiff. The illegal construction was in existence at the time of selling plot but at the time of purchasing the said suit property from George and thereafter to plaintiff he was not aware about the illegal construction of the defendant no.1. Further at the time of survey of plot there was a security wall and the plaintiff and earlier George Varghese did not aware about that, the open space beyond the security wall falls into survey no.26/7. When the plaintiff visited the actual site and observed the construction done by the defendant from the boundary and measured the same, he noticed that, the encroachment is about 10.5 meters long and 12 meters wide is done by defendant no.1 Therefore, it is necessary to measure the suit property to find out encroached portion of the land.

Further it is necessary for the just decision of the case. Hence, the present application.

03. Defendant has filed his say at Exh.50 and resisted application on the ground that, on the basis of mutation entry ownership will not be decided. The plaintiff is purchased property by sale deed. According to sale deed property mentioned in schedule 2 is 1 duplex flat no.2 area admeasuring 2132 sq.ft. Defendant submitted that; plaintiff is not the owner of the entire suit property mentioned in the suit. Hence, prayed for rejection of application.

04 Heard both the parties. After going through the rival pleadings, following points arise for my consideration and I have recorded my findings accordingly.

POINTS.

FINDINGS.

- |   |                         |
|---|-------------------------|
| a) Whether appointment of commission is necessary to elucidate the matter in controversy? | Yes.                    |
| b) What order?  | Application is allowed. |

REASONS

AS TO POINT NO.1.

05. Present suit is filed for removal of encroachment, and declaration. Admittedly plaintiff has not filed hand sketch for showing encroachment of the suit property. After pursuing the documents, it is observed that, the area mentioned in the sale deed of schedule one is same as mentioned in the suit property however the area mentioned in the schedule two shows that, the plaintiff purchased the duplex flat no.2 area admeasuring 2132 sq.ft. from the Mr.George Varghese and Mrs.Daisy Varghese which was sold to them by defendant no.1. At this stage without adducing oral and documentary evidence this court cannot come to the conclusion that, plaintiff is not the owner of the suit entire property. The plaintiff submitted that there has been encroachment from southern side of

the suit property of 10.5X12 sq. meter by the defendant no.1 prior to the purchase of the said area from the person namely George Varghase. 7/12 extract shows that, plaintiff is in possession of suit land.

06. In the present suit the specific contention of the plaintiff is of encroachment done by the defendant by constructing "Omkar Residency" in the area of the plaintiff. Therefore, a local investigation by a commissioner can be made where visit to the spot is necessary.

07. The issue of possession and title is not under consideration for the present application. In such circumstances, boundaries should come on record to elucidate the matter in dispute. If application is allowed the defendant would not cause any prejudice. if he is the true owner of the suit property and he is in actual possession of the suit property and not done any encroachment in the suit land then it will come before court at the time of adducing evidence and no harm will caused to the defendant if the present application is allowed.

08. It is settled law that, whenever there is a boundary dispute Court Commissioner can be appointed so that authentic map can come on record which will be helpful to decide boundary dispute of suit property. Hence, the application deserves to be allowed. Taluka Inspector of Land Records Roha, should be appointed as a court commissioner to measure the suit property from Non-agricultural land plot no.1 Survey No.26, Hissa No.7 area admeasuring 0.02.44 R situated at Rothkhurd Tal.Roha duplex bungalow, house no.2 area 2132 sq.ft. Therefore, I record my findings in affirmative to point No.1 and for point no.2 pass following order.

#### **ORDER**

- a) Application is allowed.
- b) Taluka Inspector Land Record, Roha is hereby appointed as a court commissioner to measure the suit property i.e Non-agricultural land plot no.1 Survey No.26, Hissa No.7 area admeasuring 0.02.44 R situated at Rothkhurd Tal.Roha duplex bungalow, house No. 2

area 2132 sq.ft. with present facts and submit the report.

- c) Taluka Inspector Land Record, Roha to record any peculiar circumstances that may be found in disputed property.
- d) Taluka Inspector Land Record, Roha to submit report within one month from the date of receipt of this order.
- e) Plaintiff is hereby directed to deposit commission fee at the office of Taluka Inspector Land Record, Roha as per rule.
- f) Issue writ of this order to Taluka Inspector Land Record, Roha.
- g) Costs in cause.

Place : Roha.  
Date : 27.01.2023

(M.C.Hasge)  
Jt. Civil Judge Jr. Division,  
Roha-Raigad.