


CNR No.MHRG090006992019 	R.C.S.No.66/2019 Rajiv vs. Gulnar
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ORDER BELOW EXH. 19

This is an application, filed by plaintiff under Order XXVI Rule 9 of the Code of Civil Procedure, for appointment of Taluka Inspector Land Record (in short "T.I.L.R.") as Court Commissioner.

02. Defendant filed his say on on the same application and objected for the same.

03. Heard both sides. Perused application and say of defendants.

04. Plaintiff filed the present suit for perpetual injunction. It is the contention of the plaintiff that, there is a suit property of the plaintiff situated at mouje Balhe, Tal.Roha. Gat no.67/4A area 01.14.10 Hectre.R. he has purchased the said suit property from one Balkrishna Musale and others by Registered sale deed bearing no.1563/2012 dated 14.05.2012. and there is an entry to that effect registered in revenue records on 02.06.2014. Before purchasing the said suit property from Balkrishana Musale by plaintiff, the same had been purchased by the defendant in the present suit. But the sale deed had been made in favour of the deceased person therefore the mutation entry to that effect was cancelled by Mandal officer Kolad. Thereafter the suit property after necessary compliance purchased by the present plaintiff in the suit.

05. It is the contention of the plaintiff that, he has planted mango and other tree in the suit property and developed the same. Further an attempt was made by the defendant to encroach on the eastern side of the suit property by breaking the compound. The defendant has no right on the suit property as the same is purchased by the plaintiff by sale deed. It is further submitted by the plaintiff that, when he tried to measure the suit property every time the defendant objected to measure the same. Plaintiff has apprehension that, the defendant tried to encroach the suit property by breaking eastern side of the compound wall. Therefore, prayed for appointment of court commission.

06. The learned advocate for the defendant submitted that, he has filed one civil suit against the present plaintiff for declaration of the ownership of the suit property. Plaintiff tried to collect the evidence by filling the present application. Therefore, the application is liable to be rejected.

07. I have considered submissions of both sides, in the light of their submissions perused application, say of defendants and record of the suit. The suit is filed for perpetual injunction. Plaintiff has purchased the said suit property from one Balkrishna Musale and others by Registered sale deed bearing no.1563/2012 dated 14.05.2012 situated Mouje Balhe, Tal.Roha Gat no.67/4A. The ownership of property is in dispute. Both the parties are claiming for their right and title over the suit property at mouje Balhe, Gat no.67/4A area 01.14.10 Hectre.R.Gat no.67/4A area 01.40.10 Hectre.R. The plaintiff in this suit need to know on how much area of the suit property the defendant is encroached upon. The prayer of the plaintiff is that the defendant should not obstruct his possession and should not made any construction not obstruct his

way on the suit premises.

08. As per Order XXVI Rule 9 the court commissioner can be appointed where there is a boundary dispute and to find out the encroached portion of the land and court commissioner cannot be appointed for collection of evidence. In the present suit the plaintiff claimed that, the defendant obstructed the way of the plaintiff by constructing compound adjacent to the area owned by him. If the court commission is appointed for finding out on which area of the suit land the defendant's compound wall, planted mango trees and other trees and construction has been constructed then it will amount to collection of evidence and decree of suit.

09. The parties to the suit have to establish their respective case by producing oral and documentary evidence. On a perusal of the averments in the affidavit filed in support of the application, this Court finds that this application is filed by the plaintiff only to collect evidence to find out on which portion of the suit property the construction has been made by the defendants.

10. Further, it is the contention of the plaintiff that, there is another cross-suit pending in this court bearing R.C.S. No.90.2016 which is for the same property. It is the contention of the plaintiff that, it is necessary to know the exact encroachment made by the defendant in the suit property. Plaintiff himself not aware about the exact or actual area of encroachment in the suit property. There is dispute and other litigation pending about the ownership of the suit property. Considering the overall scenario this court come to the conclusion that, if the application is allowed it amounts collection of evidence. Hence, I pass following order:

ORDER

Application is rejected.

Place: Roha
Date:06/07/2023

Sd/-
(Megha C.Hasge)
Jt.Civil Judge Junior Division,
Roha-Dist. Raigad