

Order Below Exh.38 in Regular Civil Suit No.43/2015

1. Plaintiff has filed the present application under Order-26 Rule 9 of Code of Civil Procedure and thereby prayed that Court commissioner may be appointed.

2. It is submitted by the plaintiff that, in the suit property plaintiff and defendant have their homes. But on 01/03/2015 defendant has started to construct a new house on the same place of his old house. Defendant has made stock of all raw building material which is necessary for his construction. But defendant has put all this building material in front of the house of plaintiff. This raw material is creating resistance to plaintiff to reach him to his home. Only to give trouble to plaintiff defendant has intentionally did this act.

Further it is submitted by plaintiff that he has filed interim application below Exh. 19 to remove this obstacles from road. Court has allowed application below Exh. 19 and ordered defendants to remove this building material from road, then also defendants have not removed that raw building material from road. So to bring the exact position of the suit property, appointment of court commissioner is necessary. So plaintiff has prayed to allow his application.

3. On the other hand defendants have filed say below Exh.41 and thereby denied all the contentions of application.

4. It is submitted by defendant that they have not put any raw building material on the road. Plaintiff have sufficient road to reach his home. Only to prolong the matter and give trouble to defendants, plaintiff has filed present application. It is not necessary to appoint court commissioner. Finally defendants prayed to reject the application.

5. Heard arguments of Adv. Jagtap advocate on behalf of the plaintiffs and Adv. Nalawade advocate for defendants. The present suit is filed for injunction and Declaratory decree. It is submitted by the plaintiff that defendant by putting raw building material which is to be used for his house construction on the road, creating obstruction to plaintiffs road to house. On the other hand it is submitted by the defendant that he has not put any raw material on road. So he is not creating any obstruction on road. So after going through the pleadings of the parties, it is clear that there is contrary pleadings of parties.

6. In order 26 rule 9 it is provided that “in any suit in which the court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, the court may issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon to the court.” So considering the nature of the suit and pleading of both the parties it is important to bring on record

the factual position of the suit property on record. In my consideration by taking in account pleading of the party, exact position of suit property can only be elucidated by appointing Court Commissioner as there is no documentary evidence on record regarding same.

Therefore, it would be proper to appoint Court Commissioner for inspecting the lands mentioned above and to see the situation of the suit property. No prejudice would be caused to any of the parties. There is absolutely no ground where the evidence would be collected. Appointment of Court Commissioner would only help for adjudicating the matter properly.

6. So in the light of above discussion, I pass the following order.

: ORDER :

1. Advocate Shri. Prashant Zore Of Khed is appointed as a Court Commissioner to visit the suit lands i.e. Survey No. 212 Division A, of village Kumbhad, Tal. Khed after giving in writing notice to both the parties or their advocates regarding the date and time of his visit for commission work to the suit lands asking them to remain present at the time of commission work at the said field.

2. Both the parties are directed to appear before the Commissioner accordingly.
3. The Court Commissioner is directed to submit report regarding the presence of any raw building material on suit property. If court commissioner find necessary he may submit photographs of the suit property along with his report.
4. Plaintiffs are directed to deposit Rs.3000/- as the Commissioner's Fees on or before 14-06-2019.
5. Issue commission letter accordingly to the Court Commissioner.

(S.S.Pachandi)

Date : 07/06/2016

2nd Jt. Civil Judge, J.D.Khed.