



Regular Civil Suit No. 20 of 2018

Order Below EXH. 34

Plaintiff has filed the present Application for appointment of Court Commissioner.

02. It is contended that, Plaintiff has amended the suit and claimed mandatory injunction directing the Defendants to remove construction made in encroached areas in the suit property. That, Defendant has encroached in suit property, constructed water tank for Toilet and constructed base for keeping sintex tank. So also, Defendant has encroached, erected building and shade in suit property. Hence, it is prayed that, the TILR, be appointed as Court Commissioner and be directed to measure both the suit properties and file report along with map showing encroachment and illegal construction. Hence it is prayed that the Application be allowed.

03. Ld. Advocate for Defendants No. 1 and 2 objected the Application by filing say on the application contending that the application cannot be granted without necessary parties.

04. Perused the Application and heard Ld. Advocate for Plaintiff and Defendants. They argued as per contents of Application and say respectively.

05. It can be seen that earlier suit was filed claiming relief only of permanent injunction. However, by amendment, Plaintiff also claimed removal of encroachment by way of mandatory injunction against the Defendants. It can be seen that plaintiff's case is of encroachment. Under such circumstance, first of all, it was duty of Plaintiff to file rough sketch map showing approximate location and extent of encroachment in the suit property as per the

amendment of Hon'ble Bombay High Court in provisions of Order VII Rule 3 of Code of Civil Procedure, 1908 (hereinafter referred as 'CPC' in short). However, the said rough map has not been filed by Plaintiff. Considering the same, without filing such rough map, seeking appointment of Court commissioner with directions as prayed would certainly amount an attempt to collect evidence using Court's machinery. Hence, the present Application is liable to be rejected with Costs. This act of Plaintiff has certainly wasted time of Court and delayed the matter. Accordingly, I proceed to pass the following :-

-:: ORDER ::-

1. Application is rejected with costs of Rs. 500/- (Rupees Five Hundred Only).
2. The Cost amount shall be paid to the Legal Aid.

Place : Dodamarg.
Date : 24/07/2024.

(Y. P. Bavkar)
Civil Judge (Junior Division),
Dodamarg.