



-: Regular Civil Suit No. 36 of 2021 :-

-: Order Below Exh. No. 23:-

This is an application filed on behalf of plaintiff under Order XXVI Rule 9 of Code of Civil Procedure, 1908 for appointment of Deputy Superintendent of Land Record as Court Commissioner.

2. The present suit has been filed by plaintiff for perpetual injunction and removal of encroachment in the suit property. It is contended that, the defendant have encroached upon the suit property i.e. Sr. No. 113 Hissa No. 12 which is owned and possessed by plaintiff and defendant have made illegal construction over the encroached portion. That, it is clear that, defendant have made illegal construction. Hence, Commission Report and map in respect of encroach portion over suit property and Sr. No. 111 Hissa No. 1 is necessary to bring the true position on record. Hence it is prayed that, the Deputy Superintendent, Land Record be appointed as Court Commissioner, to measure the suit property and show the exact position of encroached portion and construction and filed the Report.

3. Ld. Advocate for the defendant filed the say at Exh. 24. It is contended that, the application has been filed to collect evidence. Hence, the application may be rejected.

4. Perused the application and say. Heard the Ld. Advocate for plaintiff and defendant. It can be seen that, the suit of the plaintiff is for removal of construction made by defendant over the encroached portion over the suit property i.e. Sr. No. 113, Hissa No. 12. That, according to defendant the construction has not been made in the suit property, but in Sr. No. 111, Hissa No. 1. Thus there is dispute as to whether the encroachment is actually done or not. Considering the same the Court has

to come to a proper conclusion only after going through entire evidence on record. This being suit in respect of encroachment and dispute in respect of boundary, The appointment of Deputy Superintendent of Land Record for purpose of bringing exact position of the suit property before the Court would be appropriate. The present suit is for mandatory injunction, before passing any order to remove the disputed construction it would be necessary to see whether the alleged construction and the encroachment is illegal or not. Hence in my opinion the application is required to be allowed. Accordingly I proceed to pass the following -

-: **ORDER** :-

1. Application is allowed.
2. Deputy Superintendent of Land Record, Dodamarg is hereby appointed as a Court Commissioner to measure the suit property and to show the exact portion of encroached land and to mentioned whether there is any construction made over such land and to file its detailed report along-with map on or before 11.07.2022.
3. The plaintiff is directed to deposit the Commission Fee directly to the concerned office.
4. The plaintiff shall produce necessary documents in the Court for Court Commission.

Place : Dodamarg.
Date : 30/04/2022

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