

(CNR No.: -MHSN06-000157-2014)
(Julekha Babu Bhilavade-other V/s. Gulab Rasul Khatib-other)
ORDER BELOW EXHIBIT 43 IN REGULAR CIVIL SUIT

No.33/2014

(Order dated 23/10/2019)

1. This application is filed by plaintiffs praying for appointing court commissioner for measurement of the suit property.

2. It is contended by plaintiffs that, there is encroachment by the defendant in the suit property. They contended that, the defendant by encroaching in the suit property have made construction over it. Thus, it is necessary for just decision of the case that, the suit property be measured through appointment of City Survey Officer. If, City Survey Officer is appointed, it will be helpful for the court for deciding the suit on merit.

3. The defendant has filed her say at Exhibit 46. She denied all the contents of the application. The defendant stated that, the defendant has constructed building in her own portion. Previously, plaintiffs have filed Regular Civil Suit No.148/2010 and in that suit Exhibit 5 is filed by the court. It is contended by the defendant that C.T.S. No.4708 is wrongly given by City Survey Officer. C.T.S. No.4708 is in possession of Mrs. Shahnaj Kwaja Dhalait. C.T.S. No.4709, 4710 and the suit property is transferred by Hibba by the defendant in favour of Mrs. Shahnaj Kwaja Dhalait. She is owner and possessor of the C.T.S. No.4708. Thus, without hearing her and adding her in this suit, this application is not maintainable. Hence, she prayed for rejection of the application.

4. Perused application, say and the record of case. Heard both sides.

5. It seems from the record that, plaintiffs have filed this suit for removal of encroachment and possession of the suit property. It is contended by plaintiffs that, the defendant by using force have constructed in their property i.e. C.T.S. No.4708. But, to decide the suit on merit, it is necessary that the court commission through City Survey Officer is necessary. How much portion is encroached by the defendant and constructed by the defendant would only come on record by appointment of court commissioner.

6. Learned advocate for the defendant argued that, court cannot be used for collecting evidence. It is plaintiff, who have to stand on her own feet to prove their case. Thus, by using of court machinery, evidence cannot be collected. He further argued that, the suit is filed in the year 2014 and she has filed her written statement in 2016. In her written statement she has specifically contended that, the suit property is in possession of Dhalait. But, plaintiffs have not made her party. She is in possession of the suit property. Thus, without hearing her the application for court commissioner cannot be considered on merit.

7. On perusal of the record it reflect that, the defendant has stated that the suit property is not in possession of her and not owned by her. But, plaintiffs have not made party to Mrs. Shahnaj Kwaja Dhalait. It also further reflect from the record that, plaintiffs have come with the case that, the defendant has made

encroachment on the suit property. But, has not mentioned any specific area. Previously also plaintiffs have filed the suit. But, in Regular Civil Suit No.48/2010 injunction application is rejected by the court. Thus, it reflect from the record that, plaintiffs have not made party to the person who is in possession of the suit property. Whether Mrs. Shahnaj Kwaja Dhalait is in possession or not is the question of fact, which will be decided on merit. Thus, plaintiffs application for measurement, on this basis cannot be considered at this stage. It reflect from the record that, plaintiffs with the aid of court machinery collecting evidence for deciding their suit. Hence, as application is not on merit, liable for rejection. Hence, for above discussion, I pass following order.

ORDER

Application is rejected.

Place: Miraj.
Date: 23/10/2019.

(Nilesh M. Wali)
Jt.C.J.J.D., Miraj.

I affirm that, the contents of this P.D.F. file Judgment/Order are same, word to word, as per the original Judgment/Order.

Name of the Stenographer : S. P. Pethkar.
Court : Jt.C.J.J.D. & J.M.F.C., Miraj.
Judgment/Order signed by
the Presiding Officer on : 23/10/2019.
Judgment/Order uploaded on : 24/10/2019.