

ORDER BELOW EXH.28 IN R.C.S.NO.137/2015.

1- The plaintiffs have filed present application for appointment of Deputy Superintendent of Land Record, Kavathe-Mahankal as Court Commissioner for joint measurement of land gat no. 760 and 767. The suit is for perpetual injunction. It is their contention that the defendants have raised dispute of boundary at the time of fencing work of suit property. In order to fix the western boundary of suit property, joint measurement of land gat no. 760 and 767 is necessary by appointing Court Commissioner. They have further prayed that in order to resolve the dispute full and finally, Deputy Superintendent of Land Record be appointed as Court Commissioner. Lastly, prayed that application be allowed.

2- The defendants have filed their say below the said application. It is their contention that the suit is for perpetual injunction and not for fixation of boundary. It is their contention that the plaintiffs are trying to collect the evidence by appointing Court Commissioner. Application is not tenable in the eye of law. Lastly, prayed that application be rejected with costs.

3- Heard both sides. From the rival contentions, it appears that plaintiffs have come with the case that there is common bandh between land gat no. 760 and 767. It is the contention of plaintiffs that said bandh is having hight of 3 to 4 ft. at some part and 1 ft at some part. The defendants have caused obstruction at the time of fencing the suit property. Therefore, the plaintiffs want to carry out joint measurement of land gat no. 760 and 767. But, the suit is for perpetual injunction in which issues are framed at Exh.25 on 15-06-2017. Present application is filed on 20.12.2017. It is not the case of the plaintiffs that defendants have made encroachment over the suit property. In such situation, reasons given by the plaintiffs for appointment of court commissioner are not justifiable. It is well settled that court commissioner cannot be appointed to collect the evidence. In such situation, application deserves to be rejected. Hence, the order.

ORDER

1. Application (Exh.28) is rejected.
2. No order as to costs.

Sd/.....

Date:-04/07/2018

Kavathe-Mahankal

(Manoj C. Nepte)
Jt. Civil Judge, Junior Division,
Kavathe-Mahankal.

