

Order below Exh.51 in FD 2/2019
Madhukar Hujara Torane Vs Narayan Hujara Torane
(CNR-MHSN08-001392-2019)

The application (Exh.51) is by the JD 9 Attubai, for appointment of Court Commissioner.

2 Perused the applications, say, and the record.

3 Heard, both the sides.

4 This is an final decree proceedings, in respect of the house property more particularly mentioned in para 2 of the application (Exh.1) in the suit bearing No. RCS 194/2015. As per the judgment and decree, the original plaintiffs 1 and 2 have 1/5th share each and plaintiffs 3 to 7 together have 1/5th share. Further, original defendants 1 and 2 have been allotted 1/5th share.

5 The application is premised on the ground that the Court Commission report suffers from several irregularities. The JD 7 (d) has been disposed when possession was taken by the decree holder. The house of JD 9 has been demolished by the DH illegally while taking possession. Therefore, it would be prayed that the Court Commission may kindly be appointed for the share of the JD/applicant.

6 The application is vehemently opposed by filing say below Exh.55. The possession has been taken as per the report, suggested by the Court Commission. The due procedure has been followed. The decree has been executed. JD 9 has not been allotted any share. Hence, the applications are opposed.

7 It is settled law that the Court Commission is appointed for elucidating in matter in the dispute. The JD's 7 (d) and JD 9 (who has not been allotted any share have objected to the proceedings).

8 If the facts are considered from the angle, that these are objections under Section 47 of the CPC i.e., questions relating to execution, discharge, and satisfaction of the decree divesting of the possession by the decree holder has to be ascertained. In short, the shares of the JD 7 (d) has to be culled out and to be delivered in his possession. This is a partition decree. Though, JD 9 has not been allotted any share, the fact remains the grivence of dispossession may

by ascertained. The appointment of Court Commission, in execution proceedings is governed by Order 26 Rule 18 A of the CPC.

9 To decide the objections in the form of the dispossession etc., it is necessary to appoint the second Court Commission. Technically, the decree has not been executed, when JD 9 has not received his shares. Hence, the following

Order

The application is allowed.

2 Ld. Adv Shri.A.M.Pujari, Jath is appointed to measure the subject matter and prepare map and report as to the factual position, with the consent of Ld. Adv Smt.C.S.Kashid for the applicants, within two months.

3 The Court fees is settled by Ld. Adv for the applicants at Rs.3000/- which is acceptable to the Court Commission.

4 The applicants herein to provide the necessary documents for the Court Commission.

5 The applicants deposit the Court Commission fees within 3 days from today.

6 On due compliance issue Court Commission Writ.

Jath
Date:02/05/2025

(Sanjay P.Bunde)
Jt.CJJD, Jath