

Regular Civil Suit No. 134/2015.
O R D E R (Below Exh.24)

1. Read the application and say of defendant. Perused record and proceedings and heard learned advocates for the parties.

2. This application is filed by the plaintiffs under Order 26 Rule 9 and under Order 39 Rule 7 of the Code of Civil Procedure, to appoint Court commissioner for investigation of suit site mentioned in the plaint and to call the report about the factual position of suit site.

3. This application is strongly resisted by the defendant by filing his say at Exh. 27.

4. According to the plaintiffs, they have filed suit challenging the order dated 28-05-2015 of Tahasildar, Tasgaon by which the Tahasildar ordered to give way of 10 ft width to defendant from the suit properties belongs to plaintiffs. However, there is way having only 3 ft width towards south side of plaintiffs' property i.e. Rev. Survey no. 560. But, the defendant denied this factual aspect, hence the application for appointment of an advocate as a Court commissioner, to inspect and bring on record the factual position of the said way.

5. This application is resisted by the defendant contending that in the proceeding before Tahasildar, the Tahasildar conducted spot inspection and panchnama and thereafter ordered to give way of 10 ft width to defendant. There is sufficient documentary evidence on

record to resolve the controversy between the parties. However, this application is filed only with a view to collect evidence through the commissioner and to fill-up the lacuna in case, which is not permitted as per law. Hence, he prayed for rejection of the application.

6. The object of local investigation is to collect evidence at the instance of the parties, who relies on the same and which evidence can not be taken in to Court, but could be taken only from its peculiar nature, on the spot. This evidence will elucidate the point which may otherwise be left in doubt or ambiguity on record. The party has right to place evidence, which he could require to substantiate his case before the Court. The Court can not prevent party from adducing best evidence, if such evidence can be gathered with the help of commissioner. In view of provision under Clauses (a) and (b) of Rule 7 of Order 39 of the Code of Civil Procedure, the Court can order inspection even in respect of property, which is not the subject matter of suit. It is case of plaintiffs that there is way of having only 3 ft width towards south side of plaintiffs' property i.e. Rev. Survey no. 560, however, Tahasildar, Tasaon order to give 10 ft width road to defendant without any evidence. The defendant denied and disputed this fact. Considering the suit claim and controversy between the parties, I think it is absolutely necessary to appoint Court commissioner, for the purpose of elucidating the matter in dispute. Hence, this application deserves to be allowed. Hence, an order.

ORDER

1. The application is allowed.
2. Advocate Shri. S. R. Ghare is hereby appointed as a Court Commissioner. The Court commissioner to inspect the site mentioned in the plaint and submit his report about factual position of suit site and disputed way.
3. The Court commissioner is directed to give prior notices to both parties.
4. The plaintiffs to deposit amount of Rs.2000/- towards commission fee. The plaintiffs are directed to supply necessary documents to the commissioner.
5. After aforesaid compliance by the plaintiffs, commission writ be issued.

TASGAON.
Date : 17th March, 2016.

Sd/-xxx
(A. A. Chendke)
CIVIL JUDGE, JUNIOR DIVISION
TASGAON.