



R.C.S. No. 83/2024
CNR. No.MHSN140004372024
Ganapati Vs. Dadu

ORDER BELOW EXH. 26.

This is an application to appoint Deputy Superintendent of Land records as court commissioner.

2. The plaintiff contended that, he filed suit for perpetual and mandatory injunction. Defendant No.12 denied plaintiff's suit and contended about his construction is going on in his own land. Therefore, there is need to appoint commissioner to measure the suit property for ascertaining boundaries. He prayed to allow the application.

3. Defendant No.12 denied and opposed the application vide reply (Exh. 28). According to him, there is no open land belonging to the plaintiff. This application is filed to collect evidence. If the Court came to the conclusion to appoint court commissioner, he prayed to measure his land Survey No.124/1, 124/2/2 and 124/3/1 along-with road site construction shop shed and call its report.

4. I have carefully perused available record and argument of both parties. The following points are arises for my determination therefrom and I record my finding and reasons thereon as under :

Sr. No.	POINTS	FINDINGS
1.	Whether the appointment of court commissioner is requisite and proper for	

	purpose of elucidating matter in dispute ?	Yes.
2.	What order ?	As per final order.

REASONS

POINT NOS. 1 & 2 :

5. Aforesaid points are interlinked, therefor taken to decide simultaneously. Needs to go through necessary provisions of the Code of Civil Procedure for deciding this application.

Section 75 ; Power of Court to issue commissions : Subject to such conditions and limitation as may be prescribed, the Court may issue a commission -

- (a) to examine any person;*
- (b) to make a local investigation;*
- (c) to examine or adjust accounts; or*
- (d) to make a partition;*
- (e) to hold a scientific, technical, or expert investigation;*
- (f) to conduct sale of property, which is subject to speedy and natural decay and which is in the custody of the Court pending the determination of the suit;*
- (g) to perform any ministerial act.*

Order XXVI Rule 9 – Commission to make local investigation –

In any suit, in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market-value of any property, or the amount of any mesne profits or damages or annual net profits, the Court may issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon to the Court.

Provided that, where the State Government has made rules as to the persons to whom such commission shall be issued, the Court shall be bound by such rules.

6. Learned advocate Shri.P.B.Thorat for plaintiff and learned advocate Shri.S.T.Pardeshi for defendant No.12 argued at length and reproduced all facts.

7. I have carefully perused the record and argument. This is suit for perpetual and mandatory injunction. According to the plaintiff, defendant No.12 trying to make construction on his land and prayed to remove that construction if found in his land. According to defendant No.12, he making construction in his own land and not in plaintiff's land. It is established that both parties have adjacent lands and dispute of boundaries. Hence, need to solve their dispute permanently. This is fit case to make inspection on the spot through the commissioner. It does not amount to collection of evidence.

8. It is necessary to find out boundaries of suit property, which may helpful to decide controversy and dispute of the parties finally. Similarly, defendant No.12 also prayed to measure his land survey No. 124/1, 124/2/2 and 124/3/1. There is need to measure defendant's lands also to find out his possessed area, which may helpful to decide alleged controversy and place of alleged construction. Thus, exact position and location of construction and boundaries of suit land are required to come on the record. The joint measurement of aforesaid lands may help for proper adjudication of the suit, decide dispute permanently and to find out truth through the local inspection/commission. It is requisite and proper for elucidating matter in dispute. It may help to decide real dispute between parties. Hence, I found substance in this application. In event of allow this application, no loss or harm will cause to

anybody. Both parties shall bear cost of measurement of their respective lands. Hence, I answered point No.1 in affirmative and I pass following order in answer of point no. 2.

:: ORDER ::

1. The application stand allowed in the interest of justice.
2. The Dy. Superintendent of land record, Shirala, District Sangli is appointed as court commissioner to joint measure land survey Nos. 123/2/A/1, 123/5/B/1, 124/1, 124/2/2 and 124/3/1 at Charan, Tal. Shirala and District Sangli and prepare map and and report situation of that land and encroachment if found, vide section 75 (b) and Order 26 Rule 9 of the Code of Civil Procedure.
3. The Dy. Superintendent of land record, Shirala, District Sangli shall submit report as early as possible.
4. The plaintiff and defendant No.12 shall pay necessary fees of measurement/ commission of their respective lands with office of Land Record, Shirala and supply copies of necessary documents within 7 days with court commissioner if claimed.
5. Both parties shall co-operate the court commissioner to do commission work as early as possible and in default they will face its consequences.
6. Issue writ of commission to Dy. Superintendent of land record, Shirala accordingly.
7. Order dictated on computer and pronounced in open court.

Dated :02/09/2024.

(S. A. Surjuse)
Civil Judge Junior Division,
Shirala

CERTIFICATE

I affirm that the contents of this P.D.F. file are same word to word as per original order.

Name of Steno : A.S.Patil (Steno. Grade-3)
Court Name : C.J.J.D. & J.M.F.C., Shirala.
Date : 02/09/2024.
Signed by Presiding
Officer on : 02/09/2024
Uploaded on : 03/09/2024
