

R.C.S. No.180/2019

Maruti Vs. Bhima and others

Order below Exh.26.

The plaintiff has prayed for appointment of Court commissioner for measurement of suit property and land bearing gat No.162, admeasuring 60 R land situated at Mauja : Khandbhose, Tal. Pandharpur.

2. The application is proceeding without say of the defendants.

3. Heard learned advocate Shri Shinde for the plaintiff. He contended that the plaintiff has purchased suit property in Year, 1985 and since then it is in continuous possession and ownership of the plaintiff. He further contended that the plaintiff has sold out 60 R land situated on eastern side of the Gat No.162 to the defendants. He further contended that on 20.02.2022 the defendants have breached the common bandh and tried to encroach in the suit property. With these backdrop, he prayed for joint measurement of the suit property as well as the property in possession of the defendants.

4. In the case in hand, the plaintiff has not prayed for removal of any encroachment or delivery of vacant possession of any property unto himself. There is no pleading in the plaint regarding alleged incidence dated 20.02.2022.

5. The suit property is in respect of gat No.162 whose four boundaries are clearly mentioned in para No.1 of the

plaint. The plaintiff has not pleaded that suit property has been encroached, nor any relief of declaration to that effect has been prayed for. It is a suit for permanent injunction for restraining the defendants from interfering with the plaintiff's enjoyment of suit property. The plaint speaks about existence of common bandh between the suit property and 60 R land of the defendants. Therefore, the plaintiff has failed to made out identity dispute regarding the suit property. The plaintiff is not claiming any encroachment over the suit property rather he has pleaded about fear of encroachment in future. The plaintiff has not claimed recovery of possession of any encroached land. Therefore, the plaintiff has failed to made out case for setting into motion the discretionary power under Order 26 Rule 09 of the Code of Civil Procedure. In the given circumstances, the local inspection is not warranted. The breach of the bandh as claimed by the plaintiff can be established by other available modes of evidence.

6. The application is rejected. Hence, the order.

ORDER

- a. The application (Exh.26) is hereby rejected.
- b. Order dictated in open court.
- c. The order is digitally signed.

Date : 05.12.2022.

[A. R. Yadav.]
Jt. C.J.J.D., Pandharpur.

CERTIFICATE

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

Name of the Stenographer	: <i>Rajiv Malkarjun Gogi.</i>
Court	: Jt. Civil Judge, J.D. Pandharpur.
Date of Order	: 05.12.2022
Order signed by the presiding officer on	: 05.12.2022
Order uploaded on	: 05.12.2022