

ORDER BELOW EXHIBIT- 45 IN R.C.S.No.393 of 2009

Plaintiffs have filed the present application to cancel (reject) the order passed below application (Exh.38) and to proceed with the trial.

2. It is asserted that the suit is for recovery of possession of 56 Are encroached land. Defendants have submitted their written statement (Exh.26) and resisted the suit. On 25.10.2012, plaintiffs have filed affidavit in lieu of examination in chief (Exh.30) of their power of attorney. Thereafter, defendants have filed applications (Exhibits-31, 33, 34, 35, 36 & 37) seeking time for cross-examination. Thereafter, they have filed application (Exh.38) on 04.02.2014 for appointment of T.I.L.R. as court commissioner. Said application was allowed by an order dated 16.07.2014. They have not complied the order. T.I.L.R. Office has informed the defendants on 18.05.2015, 15.12.2015 & 20.01.2016 to pay the fee and to submit the 7/12 extracts. Even thereafter, they have not made compliance. Due to which, measurement is not carried out till date. T.I.L.R Office has informed this court vide letter (Exh.44) about the non-compliance. It shows that the defendants do not want to complete the commission work. Hence, the application.

3. Defendants have filed the say and opposed the application contending that the application is false. T.I.L.R. Office has not informed them about the measurement fee. They are ready to deposit the measurement fee after the same is communicated to them in writing. They have prayed for passing the order.

4. Perused the record and proceeding. It is seen that the plaintiffs have correctly mentioned the relevant dates in the application and hence there is no point to repeat the same. Suffice it to note that the defendants have filed several adjournment applications before filing application (Exh.38) for appointment of court-commissioner. Said application was allowed on 16.07.2014 and the defendants were directed to deposit the requisite fee in the office of T.I.L.R. Barshi within 15 days. Record shows that the writ was send from this court to T.I.L.R. Barshi on 25.03.2015. Since then, 27 months have been elapsed and the order is yet to be complied by the defendants. T.I.L.R Office Barshi has informed this court vide letter (Exh.44) that the defendants were asked by letters dated 18.05.2015, 15.12.2015 & 20.01.2016 to pay the measurement fee and to do the needful. However, they have failed to deposit the measurement fee and to do the needful. Said office has not only forwarded the letter (Exh.44) but also annexed the letters issued by it to the defendants. It shows that the defendants did nothing after the order was passed. Even the order passed below application (Exh.38) shows that the defendants and their learned advocate were absent when called for the said application was called for hearing.

5. Defendants have simply stated that the application is false. However, they have not specified as to which of the assertions of the plaintiffs are false. This court finds that the application is based on the court record. Defendants have further submitted that they are ready to deposit the measurement fee after they are informed by the concerned office in writing of the fee. It

is relevant to note that the concerned office is not under obligation to inform them about the measurement fee. Rather, defendants were bound by the order of the court to deposit the same in T.I.L.R. Office. Instead of approaching the said office, they are waiting for information. It is evident from the conduct of the defendants right from filing adjournment application (Exh.31) uptill now that their only intention is to prolong the trial. Since beginning, they are causing delay and that is why costs of Rs. 1500/- was imposed upon them by the very same order by which T.I.L.R. Barshi was appointed as court-commissioner to jointly measure the lands of the plaintiffs and the defendants.

6. In the facts and circumstances, application is not without merit. More than sufficient time has already be given to them. No further time can be given. Suit is pending since 2006 and in this court since 2009. It is already 10 years old. It is well settled that the suit has to proceed on each and every date. Progress of the suit cannot be arrested in a casual manner. Defendants cannot be permitted to halt the progress of the suit. Hence, the application is allowed. Suit shall proceed in accordance with law. Application (Exh.38) shall be treated as if the said application was rejected. Inform the T.I.L.R. Office, Barshi accordingly.

Date : 29.06.2017

(S.K. Khan)
Jt. Civil Judge (J.D.),
Barshi.

CERTIFICATE

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

Name of Stenographer :

Court Name : S.K.Khan,
Jt.C.J.J.D.& J.M.F.C. Barshi

Date : 29.06.2017

Order signed by the
presiding officer on : 29.06.2017

Order uploaded on : 29.06.2017