

ORDER BELOW EXH. 27 IN R.C.S. NO. 355/2012

This application is under Order XXVI Rule 9 of the Code of Civil Procedure.

2. The plaintiff submitted that he filed suit for perpetual injunction to restrain the defendant from encroaching upon the suit property. Defendant No. 2 filed written statement. Thereafter, the plaintiff became ill and went to Mumbai for taking treatment at Tata Memorial Hospital. After returning also he is taking medicines. The plaintiff is out of station for his job and his constituted attorney i.e. his father is not able to look after agricultural land due to illness. However, defendants No. 1 and 2 made encroachment in suit property by causing damage to *Bandh* at the end of year 2013. The plaintiff applied for amendment. The same was allowed and the plaintiff filed amended copy on 10/01/2019. At Para No. 9-B, the plaintiff prayed for measurement of land through T.I.L.R., Barshi. Hence, it is necessary to measure the suit property to find out exact encroachment area.

3. Defendants failed to file their reply and failed to argue on this application.

4. Perused the record. Initially the plaintiff filed suit for perpetual injunction alleging that the defendants are trying to make encroachment on the suit property. Later on, he carried out amendment by inserting fact as to encroachment and prayed for measurement of suit property by T.I.L.R. Thus, at one hand the plaintiff is stating about encroachment and at the other hand he is not praying for recovery of possession which is necessary relief. On the contrary, he just prayed for measurement through T.I.L.R.

Thus, the plaintiff is seeking appointment of Court Commissioner to measure the suit property which is his final prayer. Under such circumstances, interim order cannot be passed which is final prayer. Otherwise it will amount to allowing the suit. Even after appointing Court Commissioner, no purpose would serve in this suit as the plaintiff is not praying for recovery of possession. Hence, application needs to be rejected. Accordingly, following order.

ORDER

Application is rejected.

(R. S. Dhadake)

Date:- 06/04/2021

2nd Jt. Civil Judge, J.D., Barshi

CERTIFICATE

I affirm that contents of this PDF file Order /Judgment are same word to word, as per the original Order /Judgment.

Name of Stenographer	: Shaikh A.G. Steno Grade-III
Court	: 2 nd Jt.C.J.J.D., Barshi
Judgment / Order date	: 06/04/2021
Judgment /order signed by the Presiding Officer on	: 06/04/2021
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