

R. C. S. No. 228/1983

Mohan Chandak	----	Plaintiff
Vs.		
Pratibha Vilas Ghalsasi	----	Defendant

Order Below Exh. 103

1. The plaintiff has filed this application to call record and proceeding in RCS No. 172/1978 in this present proceeding.

2. The defendant has taken strong objection by filling say at Exh. 104.

3. Heard advocate of both sides. It is submitted by the Advocate for the plaintiff that Reg. Civil Appeal No. 58/1989 was filed against decree passed in present RCS No. 228/1983. In the judgment of that appeal the direction was given to allow the parties to lead evidence. The evidence in respect of the present suit and RCS No. 172/1978 was togetherly recorded in RCS No. 172/1978. So, the plaintiff wants to call the record and proceeding in RCS No. 172/1978 to see what evidence was lead previously and what evidence is needed. Advocate for the defendant submitted that it is not mentioned in Rojnama of this suit that the evidence is record in RCS No. 172/1978. So, the application filed is only to prolong the case and liable for rejection.

4. The copy of the judgment in R. C. A. No. 58/1989 is filed on record at Exh. 61. The direction given is that “ the matter is remanded to trial Court. The trial court should appoint the settlement commissioner as Court Commissioner, in the lite of the discussion made herein above and after the receipt of his report, allow the parties if they want to lead any evidence and then dispose the matter as early as

possible.”

5. In that judgment it is also discussed in para 5 and 6 that the oral evidence in both suit was record in RCS No. 172/1978. The names of the witnesses examined are also mentioned. Thus, it is clear that the evidence of both suit was recorded in RCS No. 172/1978.

6. Now, we have to see whether record and proceeding in RCS No. 172/1978 is necessary to be called in present proceeding. As per directions given in the judgment in R. C. A. No. 58/1989 the Court Commissioner was appointed. The Court Commissioner filed report which is at Exh. 94.

7. From the directions in the judgment it is clear that the opportunity should be given to the parties to lead evidence in respect of the report of the Court Commissioner. Both parties can lead evidence in respect of the maps and report filed by the Court Commissioner so, there is no necessity to lead other evidence. Therefore, the record and proceeding in RCS No. 172/1978 need not be called in the present suit. Hence, this application is liable for rejection.

ORDER

1. Application stands rejected.
(pronounced in open Court)

Dt. 06/01/2017
Karad.

(P. A. Savadikar)
Civil Court Sr. Dn. Karad.

Ganesh D. Jadhav,
Stenographer (L.G.)