

3) The defendant no.1 has filed his say vide Exh.30. It is submitted in spite of there being an application below Exh.5, the plaintiffs have not proceeded with it. They have filed this application of court commissioner below Exh.29 to collect evidence. The prevailing position at the suit land can be clearly seen from the documents filed by the plaintiffs and the defendant on record. The plaintiffs do not have any concern nor are they in possession of the suit property. The point that the plaintiffs are trying to bring on record could be got by other source like revenue record, peek-pani panchanama, photograph etc. Hence, there is no need to appoint a court commissioner. There is no procedure to prove the suit through the court commissioner. As yet oral evidence has not come on record, hence there is no need to appoint a court commissioner.

4) Heard the Ld. Adv. for the plaintiffs and the defendant no.1. On the basis of the arguments, pleadings and the documents filed on record, the following points arise for my determination. The findings thereon along with reasons thereto are as follows.

Sr.No.	Points	Findings
1	Does the plaintiffs prove that court commissioner is required to be appointed to find out the number of trees with their variety existing on the suit property ?	...In the negative
2	What order ?	As per final order.

REASONS

As to Point no.1:-

5) Plaintiffs have filed the suit for perpetual injunction and

declaration against the defendants. It is alleged by the plaintiffs that the possession of the suit property is with them. However, by a false adoption deed, the defendant no.1 has got his name entered in the record of rights and subsequently sold out the property to the defendant no.2. It is further alleged that the plaintiffs were ploughing the suit property, the defendant no.2 has obstructed them and in consequences the plaintiffs have come to the Court for protection. The defendant no.1 has appeared and filed his written statement. The defendant nos. 2 and 3 have not filed their written statement. Exh.5 wasn't pressed by the plaintiffs and hence my Ld. Predecessor has passed order for conducting the Exh.5 along with the suit.

6) At present the suit is for issues. During the pendency, the plaintiffs have preferred the application on the pretext that the defendant has denied that there are 2000 teak trees and 60 lemon trees on the suit property. The 7/12 extract of the suit property reflects that there are 200 teak trees and 60 lemon trees since the year 2000. Perusing the written statement of the defendant no.1, there is no specific contention of denials except for general denial to the contention of the plaintiffs. The plaintiffs themselves have not mentioned any number of trees in the plaint. The Ld. Adv. for plaintiffs have argued that there is no mention of the trees in the sale-deed executed by the defendant no.1 in favour of the defendant no.2. On this count, the plaintiffs have sought the court commissioner to count the number of trees in the suit property and give it's report.

7) Considering the nature of the suit, no pleadings about the number of trees, the number of trees not being the issue; the

plaintiffs have been unable to put a case as to why a court commissioner should be appointed to count the trees. Even if as per the plaintiffs, it is necessary for their case that the number of trees in the suit property comes on record, the same can be brought on record through the 7/12 extract wherein every year the crop on the agricultural land is entered. Entry of only 200 teak trees is seen in the 7/12 extract since the year 2000. If in fact, there were 2000 teak trees on the suit property, its entry should have been done in the concerned column of the 7/12 extract. So also, if the property is in possession of the plaintiffs, photographs showing the existing position can be filed on record. The plaintiffs can lead necessary evidence during the hearing of the trial. Hence, I do not find it necessary at this stage that a court commissioner should be appointed as prayed by the plaintiffs. Hence, the plaintiffs have failed to prove that court commissioner is required to be appointed to find out the number of trees with their variety, existing on the suit property. Therefore, point no.1 is answered in the negative.

AS TO POINT NO. 2 :-

8) In view of the discussions herein above, point no.2 is answered as per the final order.

ORDER

1} Application is rejected with costs.