



ORDER BELOW EXHIBIT 58, IN R.C.S. NO.332 OF 2014

Aakaram Kale Vs. Vitthal Fasale + 3

The plaintiff has made the present application, for grant of permission to issue commission for measurement through Sub-Divisional Executive Engineer, PWD, Karad, as provided under Order XXVI Rule 9 of the Code of Civil Procedure, 1908.

2. Perused the application, pleadings and the record. Heard, the plaintiff, through advocate. Despite providing reasonable opportunity, neither the say is filed, nor appeared for hearing of the application on behalf of the defendant.

3. The plaintiff has instituted the suit for claiming the right to way from the property of defendant no.1, by easement. The plaintiff alleged that defendant no.1 made the encroachment over such easement right, vis-a-vis, areal encroachment on air and light, by making the construction thereon. He sought the reliefs of declaration, perpetual injunction and mandatory injunction. According to the plaintiff, to resolve the controversy amongst the parties, the measurement of Survey Nos.1118,1119,1120, 1121,1122 and 1123, through Government Officer i.e. Sub-Divisional Executive Engineer, PWD, Karad. Hence, this application.

REASONS

4. The plaintiff sought to issue commission for measurement. The plaintiff averred the fact of encroachment over the right to way by easement. The plaintiff is claiming the existence

of ancestral right of way by easement. To prove such existence, past evidence will be required. On measurement existing circumstance on spot at present will be brought on record. Moreover, the plaintiff has to prove his case on his own. He cannot take the assistance of the Court to collect evidence for him. Therefore, the relief sought is not tenable. Moreover, similar application was made at Exh.54, which was rejected, vide order dated 18.09.2017, on the ground of collection of evidence. The present application is moved, by making slight change of measuring authority. The application, Exh.54 was rejected on merit as not entitled for measurement and not for the defect of measuring authority. Therefore, on the same ground, before the Court, no repeated reliefs can be sought, mere on the basis of slight changes. The relief sought in the present application is already refused vide Exh.54. Therefore, the plaintiff is not entitled to make the present application again and again. The application is deserves to be rejected with costs. Hence, I Pass following order

ORDER

1. The application (Exh.58) is hereby rejected with costs of Rs.500/- to be paid to the Government.
2. The application (Exh.58) is disposed of, accordingly.

Place :Karad.
Date :07.10.2024.

(Sudhir M. Bomidwar)
Judicial Magistrate (First Class),
Karad.