

Order Below Exh.129

Plaintiffs have moved the present application for appointment of T.I.L.R. as a court commission by taking recourse to Order 26 Rule 9 of the Code of Civil Procedure, 1908, contending therein that, plaintiffs have filed suit for declaration, mandatory and perpetual injunction. According to the plaintiffs, even defendant no.1 to 3 had filed application below Exh.127 for court commission which later on they not pressed it. As per plaintiffs, appointment of court commission in respect of properties, more particularly mentioned in plaint para 1A, 1B, 1C and 1D alongwith Schedule-A and Schedule-C is necessary and so, they have requested for appointment of T.I.L.R. as court commission to measurement and showing encroachment in respect of suit property which is more particularly described in plaint para 1A, 1B, 1C and 1D.

02. On perusal of the plaint it appears that, plaintiffs have claimed mandatory injunction in respect of suit property which is described in plaint para 1D (दावा कलम १ड) Schedule-B and Schedule-C bearing Nagarpanchayat Number 199 and 200 alleging that, defendants have made encroachment and erected a structure there on. Here, plaintiffs have not claimed removal of any encroachment/mandatory injunction in respect of other properties for which now they sought court commission also. Under Order 26 Rule 9 of the Code of Civil Procedure, 1908, the Court can appoint court commission for local inspection to obtain/appreciate the evidence already on record. The object of local inspection is not to collect the evidence but, to obtain

evidence to elucidate the matters. Here, plaintiffs have sought appointment of T.I.L.R. as court commission in respect of all suit property, but, they have claimed mandatory injunction in respect of suit property mentioned in plaint para 1D (कलम १ड) Schedule-B and C having Nagarpanchayat Number 199 and 200. When plaintiffs have claimed mandatory injunction alleging encroachment in respect of suit property which is more particularly described in para 1D of his plaint, then in my opinion measurement/inspection of all properties are not required, more particularly considering claim of mandatory injunction in respect of some of the suit property. Here, no doubt appointment of court commission is necessary only in respect of the suit property on which encroachment is alleged and in respect of which mandatory injunction is claimed. Consequently the following order.

ORDER

- 1) T.I.L.R.,Karad is hereby appointed as a court commissioner and he is directed to make measurement and inspection of the suit property which is described in plaint para 1D (दावा कलम १ड) Schedule-B and Schedule-C and show the encroachment if any, on it alongwith detailed report and measurement map.
- 2) Plaintiffs to deposit the fees of measurement in the office of land record itself.

Karad.
Date :- 18/04/2022.

(Y.H.S. Deshmukh)
Jt. Civil Judge Senior Division,
Karad.