

ORDER BELOW EXH.38 IN R.C.S.NO.455/2021

This is an application filed by the plaintiff under **Order XXIV Rule 9 of the Code of Civil Procedure** (hereinafter referred to as C.P.C.), for the appointment of a Court Commissioner.

2. It is contended that; the suit is filed for the partition and separate possession. In R.C.A. No. 258/1988 a compromise was effected and accordingly suit property was divided into 5 shares. The said fact is also admitted by the defendants. If the measurement is carried out to fix the boundaries of the suit property according to the Compromise Purshis then the dispute between the parties will come to an end. Even it will assist the Court to adjudicate the matter at its finality. Hence, prayed for appointing a Taluka Inspector of Land Records, as a Court Commissioner to carry out measurement and fixing of the boundaries of the suit property.

3. On the other hand defendant nos. 3, 5, 8 and 9 have filed their say and contended that the application is false and frivolous. Hence, prayed for the rejection of the application and alternatively prayed for allowing the application subject to imposing the cost of the commission on the plaintiff.

4. Heard learned counsel for the plaintiff. Learned counsel for the defendants is absent when called out. Hence, the application is decided without their argument.

5. The following points arise for determination. I record my finding thereon for the reason stated hereinafter.

POINTS

FINDINGS

- | | |
|---|------------------------------|
| 1. Whether the appointment of a Court commissioner under Order XXVI Rule 9 of C.P.C., is necessary as prayed? | No. |
| 2. What order? | The application is rejected. |

REASONS

Points Nos.1 and 2:

6. Perused application, say and record of the suit. According to the plaintiff, the suit properties are partitioned in R.A.No.258/1988 and accordingly, the compromised decree was drawn. But in the suit, he has taken the plea that the suit properties are not partitioned and prayed for partitioning it. Defendants in their written statements have raised the contention

regarding the compromise which was arrived at in R.A.No. 258/1988.

7. Further, the plaintiff has filed this suit for partition based on the sale deed which was executed by defendant no. 3 in his favour. But a written statement of defendant no. 3 (**Exh.26**) shows that he has challenged the said sale deed. He averted that he had sold 1.32 Aar to defendant nos. 10 to 12 but he had never sold the suit property to the plaintiff. He further averted that he has filed an application at the revenue authority for cancellation of the entries standing in the name of the plaintiff. So in such a situation when the purchaser of the suit property denied the execution of the sale deed made in favour of the plaintiff then it is necessary to first decide whether defendant no.3 had executed the sale deed of the suit property in favour of the plaintiff and thereby the plaintiff is having title to it. Till such a decision the Court cannot proceed further and allow the application for the appointment of the Court Commissioner for measurement of the suit property and fixing its boundaries at the instance of the plaintiff.

8. Hence at this stage the above-mentioned factual aspect is yet to be proved. Therefore, the appointment of the court commissioner is not warranted at the present stage. Considering this answer to point no. 1 in negative. Therefore, the application is rejected. Hence, I pass the following order.

ORDER

1. The application is rejected.
2. Costs in main cause.

Date: 18.10.2023

Place: Karad

(P. G. Shelar)

6th Jt. C.J.J.D., Karad.