

REGULAR CIVIL SUIT NO.294/2023
ORDER BELOW EXH. 24.

This is an application filed by the advocate for the plaintiffs under Order XXVI, Rule 9 of the Code of Civil Procedure for appointment of a court commissioner for measurement of suit properties.

2. It is contended in the application that the defendants illegally making a road through the suit properties, so the plaintiffs have filed the suit to restrain the defendants. The plaintiffs are the owners and possessors of the suit properties and the defendants have no concern with the suit properties. The defendants are without any right or authority forcefully making a road through the suit property. By furnishing false information to the Government defendants are trying to make road through the suit properties. Defendants in their written statement have pleaded that the boundaries of the suit properties are not fixed. Therefore, it is necessary to measure the suit properties. Hence, it is prayed to allow the application.

3. The learned advocate for defendants filed his say at Exh. 26 and submitted that they mentioned in their written statement that it is necessary to fix boundaries of the suit properties. They further submitted that by giving prior notice to them, they have no objection to the measurement of the suit properties.

4. The following points arise for my determination, on which I have recorded my findings, along with reasons, therefor -

POINTS

1 Whether the application for appointment of court commissioner deserves to be allowed ?

2 What order ?

FINDINGS

Yes.

Application is allowed.

REASONS**As to points No.1 and 2 :-**

5. Heard both sides. Perused the application, reply and other documents filed on record. It is contented by the plaintiffs that the defendants illegally making road through the suit properties. The defendants have filed their written statement at Exh. 21 and contended that the plaintiffs have not got fixed the boundaries of the suit properties. They further submitted that the disputed way does not go through the suit properties and it goes through the survey no. 1/1 and 2. Perusal of pleadings of the parties it appears that there is dispute in respect of boundaries of the properties. The main contention is as per plaintiffs, the defendants are illegally making a road through the suit properties and as per defendants they are not making any road through the suit properties.

6. Perusal of revenue records of suit properties there is no mention of any road thereon. There is no documentary evidence about the fact that the exact in which property the road is exists. Thus, there would be only pleading of both the parties, which are contrary to each other. The matter is required to be elucidated by appointing a court commissioner.

7. Considering pleadings and documents on record I am of the view that if the court commissioner is appointed then the picture will be clear that whether or not the defendants are making the road through the suit properties. Without ascertaining the boundaries of the suit properties the dispute cannot be resolved. Therefore, application deserves to be allowed. Accordingly, I answer the point No. 1 in affirmative and in result, to answer point No.2, I pass the following order.

ORDER

1. The application is allowed.
2. The Deputy Surveyor of Land Record Patan is hereby appointed as court commissioner for the measurement of suit properties that is survey no. 1/3 and 3/1 situated at Bhokarwadi, Tal. Patan.
3. The court commissioner is directed to do acts mentioned in the application and file his report along with map within one month from the date of receipt of commission letter from the court.
4. The plaintiffs are directed to deposit court commissioner's fee directly in concern office and file copy of payment receipt as early as possible.
5. Issue commission letter accordingly to the court commissioner.
6. The plaintiffs to supply necessary documents and assist court commissioner, if necessary.

Place : Patan
Date : 30.04.2024

(P. D. Bhirde)
2nd Jt.Civil Judge J. D., Patan.