

**R.C.S. No. 122/2014.
Indubai Vs. Sadashiv.****ORDER BELOW EXH. No.48.**

Perused the application and say (exh.51). Shri. N.M.Yadav, for plaintiffs exhorted that even a glimpse over the report of Court Commissioner/surveyor (exh.46) would demonstrate illegal obstruction at the hands of defendant no. 1 and his son and due such high-handedness the execution of the Court Commission/ measurement no. 45/2015 was prevented and that per-se is sufficient to allow the instant application. Per-contra Shri. V.D. Kadam for defendant no. 1 submits that base for the measurement viz the concern Map is defective and therefore it would ensue erroneous finding. The concern consolidation Scheme itself has been challenged by defendant no. 1 and the dispute is sub-judice before the competent authority. Therefore, to avoid erroneous finding, such fundamental aperture was brought to the notice of the Court Commissioner by defendant and therefore same should not be viewed as illegal obstruction. Under such circumstances the application deserves to be rejected. In rejoinder Shri. N. M.Yadav, pointed out that Measurement.3634/2014 of Gut. no. 1384 made at the instance of defendant no.1, belies the contentions raised regarding Consolidation Scheme.

2. It is just a record that defendant no.1 who contested the interim injunction application (exh.33) has refrained from contesting the application (exh.42) whereby the Court Commissioner came to be appointed. The Written statement (exh.24) nowhere whisper that the concern consolidation Scheme itself is defective and or same was challenged by defendant no.1 before the competent Authority. Except bald submission no material is tendered to substantiate such stand. Therefore, in the backdrop of such reticent conduct coupled with amorphous statement defendant no.1 is precluded from making such complain to shield his own mis-deeds. The report of Court Commissioner/surveyor (exh.46) show that only on account of obstruction made by defendant no.1 and his son Maruti the Court commission/ measurement had to be stopped. Defendant no.1 has not ventured to file his affidavit to deny the allegations regarding obstruction, reflected in the Court Commissioner report (exh.46) and panchnama. Such conduct/silence of defendant no.1 speaks volumes in truth. Therefore, illegal obstruction at the hands of defendant no. 1 and his son becomes explicit, hence for the due and proper implementation of the order viz (exh.42) Court Commission, in a lawful manner, following order is passed.

ORDER

1. The application succeeds as under.
2. Dy. Superintendent of Land Records, Phaltan,/court commissioner is again directed to conduct the Court commission, as per the directions spell out in the Writ (exh.45). The plaintiff to deposit requisite charges for re-measurement at the concern office.
3. Police Inspector, Police Station, Gramin is directed to provide police assistance and or to render aid to the court commissioner at the time of conducting such the measurement, on requisition in writing received from his office. The plaintiff to bear the expenses of police aid.
4. Inform to the concern police station.
5. Issue writ accordingly on P.F. Concern to note.

Date – 11/03/2016.

(N.G.Deshpande)
Civil Judge, Phaltan.