

R.C.S. No.99/2021
Sandesh & Ors. Vs.
Vinayak

ORDER BELOW EXH.7

Read an application and the reply filed by the defendant at Exh. 28. Perused the record. Heard the learned counsel for plaintiffs Adv. Shri. P. S. Godse and the learned counsel for the defendants Adv. Shri. P. K. Barsawade.

2. The plaintiff filed this instant application and submitted that plaintiffs filed this suit against the defendant for granting mandatory injunction. Plaintiff are seeking mandatory injunction that the defendant shall remove encroachment upon the suit property and he shall make up the suit property as it was earlier. The plaintiff submitted that the plaintiff is the owner of house property i.e. City Survey no.261 situated at Budh, Tal Khatav, Dist Satara. The defendant is the owner of house property bearing City Survey No.260 situated at Budh Tal. Khatav, Dist. Satara. The open space i.e. City Survey No.259 ad-measuring 58 Sq.Meter land is yard of plaintiffs and the defendant. There is joint possession of both the parties in the City Survey No.259. They are using the same land as of joint yard. However, the defendant encroached upon the joint yard and started construction. The plaintiff also filed temporary injunction application, but the said application is not decided till today. On 06.05.2021, my learned predecessor passed an order below Exh. 5 and the defendant is restrained from doing further construction work in C.S. No.259 and in lane which towards eastern side of C.S.

No.259 till he appears and filed his say. Now, according to the plaintiffs, the local investigation of the suit property is essential in order to decide temporary injunction application. The learned counsel for the plaintiff submitted that local investigation is essential and it is necessary to see as to how the defendant encroached upon the suit property i.e. C.S. No.259. Therefore, the learned counsel for the plaintiff prayed to appoint court commissioner for the local investigation.

3. On the contrary, the defendant filed the reply and opposed to this application on the ground that the plaintiff filed this instant application only for collection of evidence. The plaintiff is intending to measure the land i.e. C.S. No.261 which is not the suit property. The claim of the plaintiff for appointment of commissioner to make local investigation is not maintainable and therefore, the learned counsel for defendant prayed to reject the application. The learned counsel for the defendant Adv. Shri. P.K. Barsawade also submitted that, if the application is allowed, the house property of the defendant be measured for which the defendant is ready to pay the charges of court commissioner.

4. On perusal of record, it appears that there is the allegation of the plaintiff that the defendant encroached upon the joint yard of both the parties and thereafter, started construction thereon. The plaintiff is claiming mandatory injunction against the defendant. According to

the plaintiff, the defendant not only encroached upon the joint yard but he also encroached in the 9 feet lane which is in the eastern side of the house of the plaintiff.

5. In view of this, I read Order XXVI rule 9 of the Code of Civil Procedure. Order XXVI, rule 9 deals with commissions to make local investigation. Rule 9 provides that, *in any suit in which the court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market-value of any property, or the amount of any mesne profits or damages or annual net profits, the Court may issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon to the Court. Provided that, where the State Government has made rules as to the persons to whom such commission shall be issued, the Court shall be bound by such rules.*

6. In this present suit, there is allegation that the defendant encroached upon the land which is in joint possession of both the parties. The defendant denied the said allegation. Under these circumstances, local investigation of suit property is essential in order to decide injunction application. No any prejudice will cause to the defendant, if local investigation will be carried out. I found substance in the application. Accordingly, I proceed to pass the following order

ORDER

- 1) The application is allowed.

- 2) The Deputy Superintendent of Land Record Office, Vaduj or his any other subordinate officer shall be appointed as Court Commissioner.
- 3) The Court Commissioner to measure the land i.e. suit property and the house property of the plaintiff and defendant and to make the local investigation of the said property and thereafter, to make report to the Court till next date.
- 4) The plaintiff and defendant jointly and equally shall pay required fees in the office of Deputy Superintendent of Land Records, Vaduj before issuance of commission.
- 5) Both the parties are directed to take note of it.

Vaduj
Date: 06.12.2022

(D.D. Fulzele)
Civil Judge Sr.Dn., Vaduj