

ORDER BELOW EXH. 34

(Dated 19/08/2016)

1] This is an application for appointment of Court Commissioner as per provisions of Order XXVI Rule 9 of Civil Procedure Code.

2] Plaintiff has filed the suit for declaration and permanent injunction wherein the order passed by Tahsildar (i.e. defendant no. 4) is under question in so far as fixing the boundaries of the disputed road is concerned. There was a dispute between plaintiff and defendant no. 1 and others with regard to Shelu Khadse to Morgavhan road. The decision is passed by defendant no. 4 in respect of disputed road in Revenue Case no. MCA-5/Shelu Khadse/2013-14. The plaintiff has not challenged the said order, because he is said to be not affected by said order. However, while putting markings of the said disputed road, as per the case of plaintiff, the revenue authorities and its employees have committed mischief and did not mark the road in block no. 550 of defendant no. 2, but made marking in the plaintiff's land block no. 549. In order to ascertain the exact location of the road, as per the order passed by defendant no. 4 in the said revenue case, the plaintiff has filed the present application for appointment of Court Commissioner. It is also stated that as the defendant no. 3 authority (i.e. T.I.L.R.) has committed mischief by marking the road in the plaintiff's land, it would be just and proper to appoint any higher authority for the purpose of measurement. Plaintiff is ready to bear the required expenses of Court Commissioner.

3] The defendant no. 1 has filed reply below Exh. 35 wherein he has

contended that the measurement regarding road has to be carried out on the basis of Tipan Utara of survey numbers and not on the basis of village survey number map as contended by the plaintiff. It is further contended that the plaintiff has not filed a single document on record to show that the disputed road passed through the land block no. 550 of defendant no. 2. Thus, the plaintiff is trying to collect the evidence which is not permissible by law. It is also contended that the plaintiff ought to have challenge the measurement work committed by the revenue authority before it's Appellate Authority. This court has no jurisdiction to interfere into the proceeding of Mamlatdar Court. It is only to prolong the hearing of application for temporary injunction this application is filed. Hence, application be rejected with costs.

4] The defendant no. 2 also filed reply below Exh. 37 wherein he has thoroughly denied the case of plaintiff and raised almost all contentions similar to that of defendant no.1. It is his contention that the plaintiff in collusion with revenue authorities are trying to crate new road through the land of this defendant. Moreover. This defendant was not party before Mamlatdar Court. Hence, application be dismissed with costs.

5] I have heard both sides at considerable length. I have also perused the pleadings available on record and the documents as well. I have also perused the order passed by the Mamlatdar Court passed on dated 25/11/2014. On it's perusal it appears that present plaintiff is the respondent no. 1 in the said application MCA-5/Shelu Khadse/2013-14 and the present defendant no. 1 was the sole applicant. The said application is allowed with

directions that the road which may be passing through one of the pot hissa of survey no. 138 of respondent no. 1 (i.e. present plaintiff) which proceed ahead towards survey no. 136, 135 & 134 shall be made open for cultivation. It also appears that after passing of said order dated 25/11/2014, the Tahsildar, Risod has issued notice to defendant no. 2 on dated 01/04/2016 thereby affording him an opportunity of hearing in respect of disputed road. Thus, the defendant no. 2 appears to have entire knowledge of the proceeding before Mamlatdar (i.e. defendant no. 4).

6] Now in the present suit, plaintiff is asking for declaratory relief that the disputed road passes through block no. 550 (which is admittedly part of survey no. 138) of defendant no. 2 as per order of defendant no. 4 in the said revenue case. Further relief of injunction is also sought. The plaintiff is not aggrieved with the order passed by the defendant no. 4 as is stated by learned Advocate of plaintiff. There is no document on record to show that the said order is challenged by either of the parties before Appellate Revenue Court. In such situation, the order passed by Tahsildar on dated 25/11/2014 is taken for implementation and while doing measurement, the measurer as stated in the plaint, have committed some wrong. For this particular act of the employees of Mamlatdar Court, plaintiff have approached this Court seeking above declaratory relief. Prima facie it appears to be tenable.

7] The contention of the defendant no. 2 that he was not legally impleaded as a party to the proceeding before Mamlatdar Court is not sustainable at this stage because he has not made any appeal against the said

order. Moreover, he was properly heard by Mamlatdar while doing his inquiry as mentioned above.

8] The Learned Advocate for plaintiff Shri Deshmukh has drawn my attention to the copy of spot inspection report conducted by revenue authorities on dated 20/06/2016 i.e. prior to 2 months only. The copy of said report is filed below Exh. 39, which is not disputed specifically by any of the defendants. On perusal of said report, it appears that the revenue authority has made some alternative and temporary arrangement for user of the road pending decision of this Court in respect of application for temporary injunction. Thus, alternative road is kept open for both side parties which located adjacent to the land of plaintiff. Therefore, the contentions of defendants that the plaintiff is trying to prolong the hearing of the temporary injunction application and thereby causing obstructions to the defendants to use the disputed road not appears to be proper and tenable. That difficulty of the defendants appears to be solved by the revenue authority itself.

9] The next contention of defendants that this Court cannot interfere into the proceedings of Mamlatdar Court is also not sustainable at this juncture. The plaintiff is seeking relief of declaration that the disputed road not passes through his land. Such declaratory relief prima facie appears to be tenable in this Court. Therefore, in order to resolve the dispute between the parties as to the exact location of the road it is necessary to appoint the Court Commissioner. The location of the disputed road was not the specific question put forth before the Mamlatdar Court, as such application deserves

to be allowed. Hence, following order is passed.

ORDER

- 1] Application Exh. 34 is hereby allowed.
- 2] District Inspector of Land Record (DILR) is hereby appointed as a Court Commissioner who shall measure all Pot hissa of survey no. 138 of village Shelu Khadse, Tq- Risod which includes land block no. 549, 550 & 551 and thereafter, shall ascertain the location of disputed road (i.e. Shelu Khadse to Morgavhan road) and accordingly point out marking in the map prepared by him.
- 3] The Court Commissioner shall also take help of Tipan Utara or survey map as he may deems fit and the documents of 7/12 extracts of the relevant fields.
- 4] The expenses of Court commission work to the tune of Rs. 3000/- shall be borne by the plaintiff and it shall be deposited in the office of D.I.L.R. directly.
- 5] The Court Commissioner shall submit his report to this Court within the period of six weeks without delay.
- 6] Issue Writ Accordingly.

Sd/-

Dated: 19.08.2016.

(Santosh P. Deshmukh)
Civil Judge (Sr. Dn.), Washim

CERTIFICATE

I affirm that the contents of this P.D.F. File Judgment/
Order are same word to word, as per the original Order.

Name of the Stenographer :- P. P. Karanjkar,
Stenographer(LG)

Court Name :- Civil Judge (Sr.Dn.), Washim

Date :- 19/08/2016

Order signed by the Presiding Officer on :- 19/08/2016

Order uploaded on :- 22/08/2016