

Laxminarayan V/s Suresh and ors

R.C.S No.82/2019

Order below Ex.52 in R.C.S No.82/2019

CNR No. MHWS020006742019

This is an application under Order 26 Rule 9 of the Code of Civil Procedure, 1908 (herein after referred to as the 'Code') seeking appointment of Taluka Inspector Land Record, Washim (T.I.L.R) as Court Commissioner.

2. Brief facts of plaintiff's case : - Suit is for declaration and perpetual injunction. Plaintiff claims to be owner of the various immovable properties, more particularly mentioned in para no.1 of the plaint (herein after referred to as the 'Suit Property'). Declaration of ownership and perpetual injunction against defendant 2 to 5 seeking to restrain obstruction and against other defendants from cultivating the 'Suit Property' has been sought.

3. Suit is listed for hearing on interim injunction application.

4. Brief averments in the application : - The 'Suit Property' consists of gowdown constructed on it. Defendant no.1 to 5 in their written statment have denied the said fact. It is not possible to

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bring the said structure before the Court. Therefore, appointment of T.I.L.R as Court Commissioner is necessary.

5. Brief objections of defendant no.1 : - The suit is listed for hearing on amendment application below Ex.33, interim injunction application. The claim of plaintiff is based on documents, therefore, inspection is not necessary. Hence, application is liable to be rejected.

6. Brief objections of defendant no.2 to 5 : - The application is opposed on the ground that no Court Commissioner could be appointed to ascertain who is in possession of the 'Suit Property'. Application has been made with intent to delay the proceeding. The same in any case is not necessary for any purpose, hence, application is opposed.

7. Application to proceed without say of defendant no.6 to 11.

8. Perused the application, say and record. Heard both sides.

9. Following points arise for my determination, to which I record my findings together with reasons therefor.

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Sr.No.	Points for determination	Findings
1.	Whether appointment of Court Commissioner is necessary for elucidating any matter in dispute ?	No
2.	What order ?	As per final order.

Reasons.

Point No.1.

10. Application of plaintiff has to be testified on touchstone of provisions of **Order 26 Rule 9 of the "CPC"**, wherein, local investigation through Court Commissioner could be directed for **'elucidating any matter in dispute' vis-a-vis nature of proceeding.**

It appears that plaintiffs intends to appoint T.I.L.R, Washim as a Court Commissioner to ascertain the structure standing over the 'Suit Property'

11. It has to see and consider, if appointment of Court Commissioner is necessary for elucidating any matter in dispute or not.

12. From the nature of reliefs claimed, things are clear that plaintiff is claiming relief of to be declared as owner of the 'Suit Property' and

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perpetual injunction against defendant 2 to 5 seeking to restrain obstruction and against other defendants from cultivating the 'Suit Property'. There is no mention of said structure called as godown in the description of the 'Suit Property'.

13. The issue of ownership would be required to be decided on the basis of evidence led by plaintiff. The issue of perpetual injunction would be decided on the basis of finding of fact, if plaintiff is found in possession referable to a legal title etc., and obstruction at the hands of defendants.

14. The issues to be decided would be the above one and whether there existing any structure, as alleged or otherwise, is irrelevant, for it for the plaintiff to plead and prove the ownership of the structure/godwon, if required. However, the same is not the controversy to be decided.

15. Advocate for plaintiff/applicant further relied upon the judgment in the matter of Haryana Waqf Board V/s Shanti Sarup and Ors 2008 DGLS (Soft)934 (Supreme Court). On perusal of the same, it appears that there was issue of demarcation of the suit land and adjacent lands therein. This is not factual position in the case. Therefore, the judgment (supra) is not applicable to case in hand.

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Therefore, the same is in no way helpful to plaintiff.

16. The next judgment relied upon by the plaintiff is in the matter of Shri Saunsthan Gokarn Partagal Jivottam V/s Shri Narayan Raghunath Desai & Ors 2019(2) ALL MR 588 (Panji Bench). The same is in context of identification of the property, therefore, the same is not applicable to the case in hand.

17. Finally, reliance has been placed on judgment in the matter of Kashinath Ramkrishna Chopade V/s Purshottam Tulshiram Tekade & Ors 2005(4) ALL MR 519 (Nagpur Bench). The same appears to be in context of accuracy of map, issue of encroachment and local investigation by Court Commissioner. Since, there is no question of encroachment, therefore, the same is not applicable to the case in hand.

18. Advocate for contesting defendants relied upon the judgment in the matter of Vijay Subhash Nalawade V/s State of Maharashtra, W.P no.4154 of 2019 decided on 04/11/2019. The Hon'ble Bombay High Court held that in a suit wherein declaration as to existence or non-existence of way has been sought, the rejection of application for appointment of

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Court Commissioner was upheld. Further, it has been observed that the plaintiffs therein want to bring the possession over the suit property from the report of the Court Commissioner. The judgment (supra) is applicable to the case in hand, as plaintiff intends to seek declaratory relief of ownership and under the guise of the same, the location of the structure/godwon and/or possession has been sought to be brought on record.

19. In view of above, it is clear appointment of the T.I.L.R, Washim as a Court Commissioner would not elucidate the facts in the case. The question of encroachment/demarcation of property, is not before this Court. The same also does not appears to be necessary for just decision of the case. Application fails to fulfils conditions of Order 26 Rule 9 of the 'C.P.C'. Accordingly, point no.1 is answered in negative and I proceed to pass following order : -

Order

The application is rejected.

Sd/-

Washim

(Sanjay P.Bunde)

Date :-06.01.2020

3rd Jt.C.J.J.D, Washim

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Certificate

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

Court Name :- Sanjay P.Bunde,
3rd Jt.C.J.J.D & J.M.F.C,Washim

Date :- 06/01/2020

Order signed by the presiding :- 06/01/2020
officer on

Order uploaded on :- 10/01/2020

Order uploaded by :- Sanjay P.Bunde,