

MHWS100004902020



Order Below Exh.18 in R.C.S. NO.25/2020

(Madan Sitaram Lade Vs. Bhagwan Pralhad Lade)

(Dated 04th February, 2023)

1. The defendant by way of this application craves to appoint the court commissioner for ascertaining the for boundaries and admeasuring of suit property i.e. defendant wants to measure the suit property in possession of plaintiffs.
2. It is the case of defendant that plaintiffs have mentioned towards western side the land of Gulab Lade and Dilip Lade. In fact, towards western side the land of defendant is situated. The same has been purchased by the defendant from the Gulab Lade. The suit property is situated in Gut No.175. Plaintiffs have 18 R land in Gut No.175 but they have filed the present suit for 0.54 R land. Plaintiffs have filed one affidavit in R.C.S. No.72/2010. In the said affidavit, plaintiffs have admitted the land of defendant is situated towards western side. Hence, plaintiffs have no right to file the present suit. Thus, the appointment of court commissioner is necessary.
3. Plaintiffs have filed their say at (Exh.19) wherein they denied the contentions in the application. It is submitted that the present application is filed only to prolong the suit. Matter is pending for hearing on Exh.05. The application is filed only for the collection of the evidence. Hence, prayed to reject the application.
4. Defendants have filed the copy of sale deed, copy of letter issued by T.I.L.R., copy of Namuna No.8-A of plaintiffs, copy of affidavit filed by

plaintiff Nos.1 & 2 in R.C.S. No.72/2010, application filed before the Tahsildar, Malegaon.

5. The learned Advocate for the defendant submitted that due to wrong revenue entries. The plaintiffs have filed affidavit which shows they have 0.6 land R in Gut No.175. The sale deed filed on record shows that the defendant is in possession of land in Gut No.175 to the extent of 76 R. Hence, court commissioner needs to be granted.

6. The learned Advocate for the plaintiffs submitted that the documents filed on record are not necessary to appoint court commissioner. The affidavit filed by this plaintiff in R.C.S. No.72/2010 it is not submitted by the plaintiffs that they are in possession of 6 R land in Gut No.175 even they have admitted that defendant towards western side. Hence, prayed for rejection of application.

7. Heard Shri. D.R.Rokade learned advocate for the defendant and Shri.S.D.Phphale learned advocate for the plaintiffs. Considering the application and say the following points arise for my determination. I have recorded my findings are recorded thereon for the reasons ensuing:-

<u>SR.NO.</u>	<u>POINTS</u>	<u>FINDINGS</u>
1.	Whether the court commissioner is requisite or proper for the purpose of elucidating the matter in dispute ?	No.
2.	Whether application is tenable before the hearing of application for temporary injunction ?	No.
3.	What order?	Application is Rejected.

REASONS**AS TO POINT NOS.1 & 2**

8. At the outset, it is pertinent to note that the suit is for permanent injunction. Matter is pending for hearing on Exh.05. The grounds mentioned in the application are that the plaintiffs have mentioned the wrong admeasuring and the wrong four boundaries. The land of defendant is situated towards western side of suit property. The grounds mentioned is not the real dispute in controversy. If the court commissioner is allowed for measuring and for elucidating four boundaries then it may result in collection of evidence.

9. It is not out of the place to refer the Judgment of **Hon'ble Bombay High Court** in the case of **Sanjay Namdeo Khandare Vs. Sahebrao Kachru Khandare, Civil Revision Application 990 of 1998** wherein the *Hon'ble High Court reiterated that, "Court Commissioner cannot be appointed for collection of evidence"*.

10. In the present case by filing of this application defendants are trying to collect the evidence of factual position of suit property. It is also necessary to refer the Judgment of **Hon'ble Madhya Pradesh High Court** in the case of **Smt.Teena Pandey Vs. Dr.Karnesh Pandey MP.No.2406/2019** wherein it has been held that, *issue of possession is to be decided on the basis of evidence only.*

11. The present case is not based on the allegation of encroachment. The affidavit filed by the plaintiffs in RCS No.72/2010 reveals that the defendant is towards western side of suit property. It does not show that the plaintiffs are in possession of 0.06 R land each.

12. Considering the submission and documents on record it appears that, issue of possession needs to be resolved on the basis of evidence only. At this juncture, defendant failed to satisfy the necessity to appoint the appointment of court commissioner. Thus, in my opinion the court commissioner is not necessary. Hence, I answer point Nos.1 and 2 in negative. In view of point No.3 following order is passed.

ORDER

1. Application is rejected.
2. Cost in main cause.
(Dictated and pronounced in open court)

Place : Malegaon
Date : 04.02.2023

Jt. Civil Judge Junior Division
Malegaon.

CERTIFICATE

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

Name of Stenographer : **Shri. Shivam B. Patange (L.G.)**

Name of Court : P.U.Kulkarni

Jt. C.J.J.D. and J.M.F.C., Malegaon.

Date of Order : 04.02.2023

Order Signed by : 06.02.2023

Presiding Officer on

Order Uploaded on : 06.02.2023