

CNR : MHYA070000311990

R.C.S. No.65/1990

M/s. Mahavir Enterprizes -Vs-
Pravinchand Gherwara

ORDER BELOW EXH.1

(Passed on 19th November, 2018)

1 Perused the record and proceedings. I have heard learned advocate Mr. Oswal on behalf of the plaintiff and learned advocate Mr. Deshmukh on behalf of the defendant.

2 This is suit for removal of encroachment. The plaintiff alleged that on his land the encroachment has been made by the defendant. To determine the encroachment, this Court has already appointed the Court Commissioner u/s.26, Rule 9 of the C.P.C. by order dated 11/01/2010. T.I.L.R. Darwha has been appointed as the Court Commissioner. Since then the case has been pending for the report of the Court Commissioner. Deputy Superintendent, Land Record, Darwha informed this Court by it's letter (Exh.168) dated 20/04/2013 that there is difference in the area of the land as contained in the 7/12 extract and Akarbandh. According to said letter, as per 7/12 extract the area of the land is shown as 11.61 H.R. and as per Akarbandh, it is shown as 11.08 H.R. Therefore the Deputy Superintendent of the Land Record, Darwha informed this Court that unless area of the land is corrected measurement cannot be done.

3 Advocate Mr. Oswal submitted that unless the Court Commissioner filed it's measurement report the Court cannot proceed in this suit and hence the case should be kept awaiting for the Court

Commissioner's report. As against this, advocate Mr. Deshmukh argued that the plaintiff has to take effective step to remove the difficulties pointed out the Land Record Office. In reply to such argument, advocate Mr. Oswal filed a document which shows that on 04/07/2013 the plaintiff filed application before Tahsildar, Darwaha and requested to correct the area of survey No.144/1 and survey No.144/2. Advocate Mr. Oswal further submitted that the plaintiff's duty is over and now it is the duty of Tahsildar, Darwaha to correct the land.

4 Advocate Mr. Oswal has relied upon the judgment of Hon'ble Bombay High Court in Girish Vasantrao Bhoyar & another-Vs-Nimbaji Warluji Bambal 2009(4) Mh.L.J. 371 and Yeshwant Bhaduji Ghuse-Vs-Vithobaji Laxman Ladekar 2010(3) Mh.L.J. 956.

5 The judgments relied upon by advocate Mr. Oswal shows that Court Commissioner is need to be appointed by the Court in cases of encroachment and the boundary dispute. There is no doubt about the ratio laid down by the above said cases. As this Court has already appointed the Court Commissioner to measure the land, this Court has followed the ratio laid down by above said two cases. However, the Court Commissioner has pointed out the difficulty for measurement of the land and it is that the area of the land show different in 7/12 extract and Akarbandh. So, unless that ambiguity of area is clear the Court Commissioner cannot measure the land. Under these circumstances, Court cannot keep this file on sine a die for awaiting the Commissioner's report. The plaintiff is under duty to prove the

encroachment and therefore the plaintiff is having duty to remove the difficulties pointed out by the Court Commissioner. Hence, the plaintiff is under duty to take effective steps to remove said difficulty. On 04/07/2013 the plaintiff applied to Tahsildar, Darwha for correction of the area of land. But that itself is not sufficient. Because it is evident that since 04/07/2013 till today the plaintiff has not done anything towards removal of said difficulty. The plaintiff has failed to show that since 04/07/2013 he has been consistently pursuing the matter to correct the area of the land.

6 The case is very old one. The plaintiff has examined it's witness No.1. And it is seen that the plaintiff has not pursued effectively so as to carry out the measurement of the land by the Court Commissioner. The non-pursuance of matter since 04/07/2013 till today is itself sufficient for me to close the evidence of the plaintiff. But I shall give a chance to the plaintiff to pursue the matter. Hence, the following order.

ORDER

- 1) The plaintiff shall take effective steps to correct the area of the land so that the Court Commissioner could measure the land.
- 2) If the plaintiff fails to pursue the matter effectively, it's evidence shall be closed.
- 3) Suit shall be fixed on 23rd November, 2018.

Dt/-19/11/2018

(Ketankumar Telgaonkar)
Joint Civil Judge (Jr. Dn.),
Darwha.