

ORDER BELOW EXH. 1

1. This is suit for mandatory injunction and permanent injunction. It is alleged by plaintiff that, she is owner of property bearing No. 177 measuring 95 X 50 fts.. Defendant No. 1 to 4 are adjoining owner of plot No. 176 towards the eastern side of plaintiff's property. Further it is alleged that, defendants encroached on plot No. 177 belonging to plaintiff. Therefore, plaintiff filed suit for removing encroachment in the nature of mandatory injunction. Defendants appeared and filed written statement and denied all the allegations. My learned Predecessor framed issue at Exh. 15. The issue No. 2 is with respect to the encroachment on the suit property and illegal construction. On last date i.e. 11-12-2014 suit was finally heard by both the parties. From the record it shows that, plaintiff examined herself likewise defendants examined power of attorney holder Shri. Nagorao Jangale and one witness Shri. Shamrao Ranmale. Furthermore, from the record it shows that, there is no any expert witness examined or filed any document with respect to the encroachment. In the course of evidence plaintiff, witness of defendants admitted that, property No. 176 and 177 never measured by expert.

2. Recently Hon'ble Bombay High Court in case of **Vijay Shrawan Shende & Ors. -Vs- State of Maharashtra & Ors.**

reported in 2009 (5) Bom.C.R. 306. It is held that, the course required to be followed, in these premises, this Court finds that fact finding as to fact and extent of encroachment can be done only when inspection and measurement are carried out by appointment of an expert commissioner. The view of this Court that the measurement ought to be done in supported by various Judgments of this Court relied upon by the appellants. It would be not proper to dismiss the suit simply because the court commissioner has not adopted a correct procedure of measurement and the exercise of re-measurement, according to rules, if necessary, because failure of cadesteral surveyor are not attributable to parties to the suit. Relying upon above Judgment in the present suit also there is no any inspection and measurement are carried out by appointing an expert commissioner. Without that course suit cannot be adjudicated, therefore, following order is passed.

ORDER

1. Plaintiff is directed to comply the directions of Vijay Shrawan Shende & Ors. -Vs- State of Maharashtra & Ors. reported in 2009(5) Bom.C.R. 306 by appointing the expert surveyor to inspect and measure the suit property.
2. Plaintiff to bear costs of the court commissioner.

Date : 11-12-2014

(K. B. Kamgauda)
Jt. Civil Judge (Jr.Dn.)
Umarkhed