

CNR No.MHYA110004592018



ORDER BELOW EXH.101 IN R.C.S. NO.23/2018

Salauddin+13 -Vs. Sayyad +14

(Passed on 21st October, 2023)

This application is filed by defendant no.9,10,14 and 15 for appointment of court commissioner vide Order XXVI Rule 9 of the C.P.C. for ascertaining the valuation of the suit property and actual status of the property. The plaintiffs strongly opposed the application by filing say at Exh.108. Defendant no.1 to 5 have by filing say supported the application.

2. It is contention of the defendant no.9, 10, 14 and 15 that the suit is filed for recovery of possession and mesne profit. However, the plaintiff did not disclose the actual status of the construction of the suit property. Therefore, to bring the actual status of the property, as well as valuation of the property to elucidating actual situation of the property it is necessary to appoint the court commissioner. Defendants prayed for appointment of court commissioner for ascertaining the valuation of the status of the property and status of construction of the suit property. They are ready to bear expenses of the court commissioner. They prayed to allow the application.

3. On the contrary the plaintiffs submitted that the application is not sustainable in the eyes of law at this stage. They further submitted that defendants are not the owner of the suit property. They have filed false and frivolous application, therefore, application please be rejected.

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

5. Admittedly, the suit is filed for recovery of possession and

mesne profit. Yet, temporary injunction application is not decided on merit. This application is filed by defendants for appointment of court commissioner. I have gone provisions of Order XXVI Rule 9 of the CPC. The court may appointment of court commissioner for elucidating the matter in dispute between the parties. However, the present suit is filed for recovery possession of the suit property. The question of the boundary dispute or the actual status of the suit property is not in question. Moreover the burden of suit on the plaintiffs to prove their case. Defendants have filed this application for ascertaining the actual physical status of the suit property and to ascertain the valuation of the suit property. It shows that the defendants are collecting the evidence for trial. It is settled principle of law that the court commissioner can not be appointed for collection of evidence for the parties. There is no circumstances demonstrated by defendants, which shows that the court commissioner is required for elucidating the matter in dispute, considering all above aspects this court is of the view that the application is not sustainable at this stage. Defendants are trying to collect the evidence for trial. Thus, I am of the view that this application is liable to be rejected. Hence, I pass the following order;

ORDER

1. The application Exh.101 filed by the defendant no. 9, 10, 14 and 15 is hereby rejected with costs.
2. Both parties shall take note of the order.

Umarkhed
Date :21/10/2023.

(**A. S. Shaikh**)
Jt. Civil Judge, Junior Division,
Umarkhed

Order below Exh.101
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R.C.S.No.23/2018

CERTIFICATE

“ I certify that this Order uploaded is a true and correct copy of original signed Order”

Order directly dictated on : 21/10/2023

Order checked and signed on : 21/10/2023

Uploaded by : R.R.Warankar, Stenographer (Grade-III)

Uploaded on : 21/10/2023