

MHYA150008872023



Order below Exh.16 in Reg.Civil Suit No.31/2023

1] The Plaintiff has filed this application under Order 26 Rule 9 of Code of Civil Procedure for appointment of Court Commissioner. I have gone through the application before entering into merits of this application. It is much necessary to go through the provisions :-

Order 26 rule 9 of Civil Procedure Code.

Commissions to make local investigations – In any suit in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market – value of any property, or the amount of any mesne profits or damages or annual net profits, the Court may issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon to the Court. Above provision clearly indicates that this provision is to assist the Court to arrive at proper conclusion and elucidate the matter in the controversy. It is contention of the plaintiff that as per the measurement dated 09/04/2023 the plaintiff has instituted the suit for recovery of Possession of encroachment of 0.16 R. from Defendants. In order to know the real fact of encroachment court commissioner is necessary to be appointed therefore DILR Ner be appointed as a court commissioner and he be directed to submit

detail report by conducting measurement, showing encroachment if any. On other hand Defendants have filed say on same Exhibit and resisted the application stating that the plaintiff has not lead oral evidence and this application is at premature stage, this application is made to collect the evidence, the application is not showing clearing whether defendants have committed encroachment or not. Hence prayed to reject the application.

2] Perused the application and say filed by the Defendants. Heard both the advocates at length. In order to decide this application I am relying upon the case law of **Mahadev Kondiba Shinde-Vs- Nitin Sakharam Shinde and another 2022(2)All MR 593** wherein it was a held by the Bombay High Court that, *Order under 0.26 R. 9 Even before parties stepping into witness box- Premature- only after parties led evidence, discretion conferred upon court under 0.26 R. 9 to appoint court commissioner to obtain evidence for elucidating matters.* In the present case also the plaintiff is not stepped into the witness box therefore in present also this application is at premature stage. The fact and circumstances as enunciated in the above cited case and case in hand are similar. Therefore, the ratio laid down in the above cited case is applicable to the case in hand. Therefore this application is liable to be rejected with liberty to file fresh application after oral evidence. In view of discussion alluded supra, I ordain as follows :-

ORDER

1] The application at Exh.16 is rejected.

2] No order as to costs.

(Dictated and pronounced in the open Court.)

Ner

Date: 06/08/2024.

(V.S. Shinde)

Civil Judge J.D. Ner.