

–:: Order Below Exhi- 6::–

1.) Introduction:

The Plaintiff has filed the present application for preperation of court commissioner Panchnama of the disputed land under order 26, Rule 9 of the Civil Procedure code.

2.) Submission for the Ld. Advocate of Plaintiff:

2.1) The Ld. Advocate of Plaintiff submits that, It is also in the interest of the plaintiff, and in the interest of justice, and to enable this Hon'ble court to decide the issue in dispute more effectively, it is necessary and imperative that a fit and proper person be appointed to act as a court commissioner.

2.2) The Ld. Advocate of plaintiff submits that, It is necessary and in the interest of justice that a court commissioner may be appointed to make its investigation and to prepare a note on the present status of the ownership, location, survey no. and such other necessary details and particulars with respect to the suit property.

2.3) The Ld. Advocate of plaintiff further submits that, the present application made by the plaintiff is granted, no harm or prejudice is likely to be caused to the defendant and in the event, the said application is not granted, the plaintiff are likely to suffer grave injury, loss and prejudice.

3.) Merit of the Application :

- 3.1) Heard the Ld. Advocate of the Plaintiff & gone through the records.
- 3.2) The Present plaintiff had prayed for relief as specific performance, cancellation of the registered sale deed and to be declared that the sale deed dated 17/4/2013 executed by the defendant no. 2 in favour of the Defendant no. 3 is null and void.
- 3.3) Before going of the merit of the case, I herewith reporduced the relevent Provision of law. In the code of Civil Procedure order 26, Rule 9, which is as under....

- Rule 9. 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:

- 3.4) The Crux of the provision is that, the Court commissioner punchnama can be done only that circumstance.

- *for the purpose of elucidating any matter in dispute*
- *of ascertaining the market value of any property,*
- *the amount of any mesne profits,*
- *damages or annual net profits,*

3.5) As Per Complaint of the plaintiff, There is no dispute about the Description of the land, the measurement of Land and Location of Land. The plaintiff has already narrated the all such thing in her Suit.

3.6) As per submission of the Ld. Advocate of the Plaintiff that in the interest of justice that a court commissioner may be appointed to make its investigation and to prepare a note on the present status of the ownership, location, survey no. and such other necessary details and particulars with respect to the suit property.

- For the above reasons, It is not legally valid to appoint the court commissioner Panch for that purpose. It is also not legally passed the such order for the appointment of the court commissioner Panch for the collection of the evidence.

- The order can be passed, when the Court are unable to decided the real controversy of the facts. In present case, the circumstance are not shown for the passing of the such order.

- The Above facts, circumstance of case and provision of law, I pass the following order for the interest of justice.

- :: O R D E R ::-

- 1.) The Plaintiff's Application Exhibit- 6 is hereby rejected.
- 2.) No order As to cost.

The order pronounced in the Open court.

Dt. 22/1/2021

Ahmedabad.

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(JIGNESH VISHNUBHAI PATEL)

3rd Addi.Sr. Civil Judge

Mirzapur, Ahmedabad (Rural)

(UID Code- GJ00960)