

MHAH180024302018



R.C.S.No.821/2018

Machindra Bhongal

Vs.

Rajendra Bhongal & Ors.

ORDER BELOW EXHIBIT-25

The present application is filed by the plaintiff to issue direction to the Dy.S.L.R. for submitting the map and report showing the accurate encroachment.

2. It is submitted by the plaintiff that the Court Commissioner has not shown the specific encroachment in his report and map. Therefore, in order to decide the suit on merit it is necessary to issue direction to the Court Commissioner for submission of the corrected map.

3. I have heard learned advocate for the plaintiff and perused the record.

4. It reveals from the record that an order for appointment of Court Commissioner was passed below at Exh.07 dated 16/09/2022. Thereafter, the Court Commissioner filed its report and map (Exh.24). It is a settled principle of law that the plaintiff cannot use the Court machinery for the collection of the evidence. In the catena of judgments, it is held by the Hon'ble High Court that Court Commissioner should be appointed after the commencement of the evidence of the parties. Unless and until the evidence of the parties is before the Court, the Court cannot consider the Court Commissioner's report. However, in the present suit, the

Court Commissioner's report is filed before the commencement of evidence of the parties.

5. Whether there is any lacuna in the Court Commissioner's report and map or not, can be decided only after the evidence of the concerned cadastral surveyor. After the evidence of the cadastral surveyor, if the Court finds that the Court Commission report is not up to the mark, then at that time, appropriate directions can be issued. Thus, at this stage, I am not inclined to issue any directions to the Court Commissioner for correction in its map or report. Accordingly, I passed the following order.

O R D E R

1. The application (Exh.25) is rejected.
2. Cost in main cause.

(Dictated and pronounced in the open Court.)

Date: 14/11/2024

Mayursingh D. Gautam
2nd Jt. Civil Judge (J.D),
Rahuri