

W.P.No.2222 / 2011

31/01/2012:-

Petitioners by Shri MA Bohra, advocate.

Respondents No. 1 and 3 by Shri Arpit Oswal, advocate.

Heard on admission.

Being aggrieved by the order dated 10/02/2011 passed by VIII Civil Judge Class 1, Indore passed in CS No.2A/2010, whereby the application filed by the Municipal Corporation u/o XXVI r.9 CPC was partly allowed and the revenue authorities were directed to inspect the spot and submit its report, present petition has been filed.

2. Short facts of the case are that petitioners filed a suit for declaration and permanent injunction wherein prayer was that the petitioners be declared as owner of the house bearing No.125/1, Lalaram Nagar, Badi Gwaltoli, Indore measuring area 70'x140'. It was also prayed that respondents be restrained not to interfere into the possession of the petitioner. Suit was contested by the respondents on various grounds including on the ground that at the request of the petitioners, Mr. Vikram Thakur, advocate was appointed as Commissioner, who has submitted his report on 7/06/2010. Along with the

suit, an application for temporary injunction was also filed which was contested and the learned Court below by an interim order directed the parties to maintain status quo. Thereafter another application was filed by the respondent/Corporation u/o XXVI r.9 CPC which was partly allowed and the Commissioner was appointed.

3. Learned counsel for the respondent/Corporation submits that the petitioners are the only owners of the area measuring 24'x28' of the land, while petitioners are in illegal occupation of 70'x40' of land as encroacher. It is submitted that in the facts and circumstances of the case, no illegality has been committed by the learned Court below in appointing Commissioner. It is submitted that petition filed by the petitioners be dismissed.

4. After hearing learned counsel for the parties at length and keeping in view the fact that the case is at the initial stage and no objection has been raised by the Corporation about the commissioner's report submitted by Mr. Vikram Thakur, advocate, this petition is disposed of with a direction that learned court below shall proceed with the suit and shall record the evidence of both the parties. After recording the evidence, if the Municipal

Corporation is of the view that for bringing necessary facts on record, it is necessary to get the suit property inspected by the revenue authorities then the respondent/corporation shall be at liberty to move appropriate application which shall be considered by the learned Court below after hearing the other party.

5. With the aforesaid observations, the petition stands disposed of. No order as to costs.

(N.K.Mody,J.)

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