

**ORDER BELOW EXH. 12 IN RCS NO. 269/2021** MHAH140003642021  
**( Mahesh Suryakant Joshi and Ors. Vs. Ganesh  
Suryakant Joshi and Ors.)**



This is the application filed by defendant to appoint court commissioner.

2. It is stated by defendant that, plaintiff and defendant received suit property from their ancestor. There is common way towards Southern side of property of the plaintiff and defendant. On that ground there is dispute between them. Therefore, it is necessary that, suit property is measured by T.I.L.R., Newasa and boundaries were fixed. Hence, he prayed to appoint T.I.L.R. Newasa as court commissioner in order to measure the suit property and fix boundaries.

3. The plaintiff filed his say over leaf the application and stated that, if boundaries of suit property were fixed the dispute between plaintiff and defendant will come to end. Hence, application may be allowed.

4. Heard both Ld. Advocate. Perused record. Record shows that previously the plaintiff filed similar application at Exh. 6 and that application was rejected by my Ld. Predecessor. Thereafter, defendant again filed similar application but, he has not stated the ground on which he filed similar application or what are the change in circumstances due to which he preferred similar application.

5. Further, the present suit is filed for perpetual injunction restraining the defendants from destruction to the East-West road and to restrain the defendant from doing encroachment in the suit property and casing obstruction to the possession of the plaintiff over

the suit property. Defendant has not filed his written statement. The present application is filed to fix the boundary marks by admeasuring the suit property from T.I.L.R. In respect of said obstruction by defendant the plaintiff can adduce evidence. For that expert's opinion is not required. There is no need of expert to show the actual position of suit property. The nature of application is different than the relief claimed. It is not the prayer of defendant that to appoint court commissioner for local inspection. The nature of the application discloses that this application is filed to collect the evidence. It is well settled that court commission cannot be allowed to collect the evidence. It is the discretion of the Court to appoint court commissioner and discretion has to be exercised by taking into consideration the nature of suit and necessity of appointment. In present suit considering the nature of suit and the present application for appointment of court commission to admeasure the suit property, I find that the present application is filed to collect the evidence and therefore, there is no necessity to appoint T.I.L.R. for measurement and fixation of boundaries. Hence, I pass following order-

**ORDER**

Application is hereby rejected.

Date:- 11.02.2026  
Place:- Newasa.

Sd/-  
[ **Smt. Sandhya Y. Sul** ]  
2<sup>nd</sup> Jt Civil Judge Jr. Division,  
Newasa.