

**ORDER BELOW EXH.101**

Heard. Perused application filed by plaintiffs for appointing court commission to inspect condition of suit property. Defendants strongly objected by filing say.

02. It is contended by plaintiffs that, they are owner of suit property. Defendants are his neighbors. They are illegally trying to take possession of suit property. Hence, they prayed for appointment of T.I.L.R. for bringing actual condition of suit property on record.

03. It is contended by defendants that, already appointment of T.I.L.R. is done by Hon'ble Court. He is examined by both the parties. Now to fill up the lacuna in the evidence and to collect evidence through Court, plaintiffs have filed this false application.

04. The plaintiffs have placed their reliance on citation in ***Vijay Shravan Shende Vs State of Maharashtra, 2009*** (5) Mh.L.J. 279, it is held, "para no. 38 -

(V) It would not be proper to dismiss the suit simply because the Court Commissioner has not adopted a correct procedure of measurement and the exercise of re-measurement, according to rules, will have to be got done through Court Commissioner again and again, if necessary, because failures of Cadesteral Surveyors are not attributable to parties to the suit."

05. Considering application, say and arguments of both learned advocates, it can be seen that the present suit is filed for possession of encroached area and measurement of property. T.I.L.R. Jadhav has admitted in his cross examination that he has no written order for

measurement of suit land, he didn't have knowledge of measurement, ETS machine. T.I.L.R. Khurpe has admitted that he has no written order to measure suit land. Matter is pending for evidence of plaintiffs. In the light of above citation, I found substance in the submissions of plaintiffs that failures of Cadesteral Surveyors are not attributable to parties to the suit. Hence, I pass the following order:-

ORDER

- i. The application is allowed.
- ii. The T.I.L.R., Rahuri is appointed as Court Commissioner and he is hereby directed to get the property whole gat no. i.e. Gat No.17(17/1 and 17/2) and Gat no. 231 situated at village Varvandi, Tal. Rahuri, Dist. Ahmednagar and measure after taking into consideration of all the facts and circumstances having regard to the division record in respect of the suit land and fix the boundaries thereof and he shall submit his report showing encroachment, if any, alongwith a map within 3 months from the date of this order.
- iii. The Plaintiffs are directed to pay the Commissioner's fee in the office of T.I.L.R. itself within two weeks.
- iv. Issue Commission writ to the Court Commissioner on payment of fees by the plaintiff in the T.I.L.R. office and depositing of the receipt in the Court accordingly.

Date: 28/04/2025.

(**Smt. Anupama C. Parshetti**)
Civil Judge Junior Division, Rahuri.