

Order Below Exh.5 in R.C.S. No.97/2014

The present application is filed by the plaintiff vide Order XXVI, Rule 9 of the Code of Civil Procedure for appointment of Court Commissioner. Perused the application. Defendant no.1 resisted the application by filing written statement and say vide Exh.16. This written statement and say is admitted by defendant no.2 and 3 vide Exh.18. The defendants objected the application. Heard, Ld. Advocates for both parties. I have gone through the plaint and written statement.

2) It is the contention of the plaintiff that the defendants are trying to encroach and have encroached in the suit property bearing Block No.109/1-B admeasuring 1 H.33 R. situated at village Aradgaon, Tal. Rahuri, Dist.Ahmednagar which is more particularly described in para 1 of the plaint. The defendants challenged the case of the plaintiff in respect of encroachment in the suit property. They denied that, they have encroached in the suit property. The plaintiff is seeking relief for fixation of boundaries and possession of the property if proved to be encroached by the defendants. It is burden on the plaintiff to establish the alleged fact of encroachment. Unless and until this issue of encroachment is decided, the disputes between the parties will not be settled finally. Therefore, in view of the above reasons, I hold that in

absence of measurement of the suit property, correct position cannot be brought on record. Therefore, I pass the following order.

ORDER

- 1] The T.I.L.R., Rahuri is hereby appointed as Court Commissioner and directed to admeasure entire land bearing Block No.109/1-B admeasuring 1 H. 33 R. situated at village Aradgaon, Tal. Rahuri, Dist. Ahmednagar along with adjacent agricultural lands situated at four boundaries.
- 2] The T.I.L.R., Rahuri is also directed to fix boundaries of the land bearing Block No.109/1-B and report whether there is encroachment along with map.
- 3] The T.I.L.R. shall submit his report within one month from receipt of writ from this court.
- 4] The plaintiff is directed to deposit commission fee in the office of T.I.L.R., Rahuri as per rules.
- 5] The plaintiff is also directed to submit in the Court copy of receipt of deposit of commission fee within two weeks from the date of this order.
- 6] Issue Writ to the Commissioner accordingly.

Date :17/11/2016.

(**G.G. Itkalkar**)
Civil Judge J.D., Rahuri.