

ORDER PASSED BELOW EXH. 7 IN R.C.S NO. 83/2013

This is an application filed by the plaintiffs under Order XXVI Rule 9 of the Code of Civil Procedure for the appointment of T.I.L.R Rahuri, as Court Commissioner to admeasure the suit land which is more particularly described in para-1 of the plaint and to fix it's boundaries as per the record of rights.

2. It is contended in the application that the suit land is ancestral land of the plaintiffs and defendant no.6. Towards eastern side of suit land, there is land of defendant no.1 of block no. 227/1 and towards western side of suit land there is land of defendant nos. 2 & 3 of block no. 313/1. So also towards southern side of the suit land there are lands of defendant no. 4 of block nos. 229/1 and block no. 229/2 and towards northern side of the suit land there are lands of defendant no.5 of block nos. 231/1 and 231/2. Towards northern side there is land of plaintiff no.1 of block no. 226. There is north-south common bandh between the land of the plaintiffs and defendant nos. 1 to 3. There is east-west common bandh between the land of the plaintiffs and defendant nos. 4 & 5. Since 2010 the defendants are trying to demolish the said common bandhs and tried to encroach upon the land of the plaintiffs. The plaintiffs tried to convince them, but all in vain. In the month of September 2012, the defendants have tried to encroach upon the suit land. The plaintiff tried to convince them, but all in vain. Therefore, the plaintiffs were constrained to file this suit for the measurement of the suit land and fixation of it's boundaries as per the record of rights. Wherein, they have preferred this application for appointment of T.I.L.R. Rahuri, as court commissioner .

3. The defendant Nos. 1 to 6 served with the suit summons, but failed to appear before the Court. Hence, suit is proceeded ex-parte against them.

4. I have heard Ld. Advocate Shri. K.R. Ghadge for the plaintiffs and also perused the documents filed on the record by the plaintiffs.

5. I have gone through the pleadings of the suit and documents. Prima-facie, it appears that there is dispute regarding the boundaries of the suit property. Plaintiffs are claiming that defendants are causing damage to the common bandh situated between their properties. The defendants are failed to appear before Court though summons were duly served to them. In order to have the decision of suit on merit and to elucidate the dispute between the parties, the appointment of Court Commissioner is necessary. If this application is allowed, then there would be no hardship to the defendants. In my opinion the appointment of T.I.L.R, Rahuri as Court Commissioner in the present case would meet the ends of the justice. In order arrive at proper conclusion regarding the boundary marks of the suit land and fact of encroachment if any, it would be just and proper to direct to measure the entire block no. 230 in the absence of which the correct position cannot be brought on record. In the absence of the entire block no. 230 and if necessary the other adjacent land, the fact of the encroachment cannot be ascertained and even it would be difficult to fix the proper boundary marks. Therefore, it is necessary to direct to measure the entire block no. 230 and if necessary the other adjacent block numbers for arriving at the correct conclusion regarding the fact of encroachment. Considering this, I pass the following order.

ORDER

1. Application is allowed.
2. T.I.L.R Rahuri is hereby appointed as a Court Commissioner and he is directed to admeasure the entire block no.230, and to fix the boundaries of the suit land in the light of contents of this application and to submit his report alongwith detailed map within three months from the date of this order.
3. The T.I.L.R. is at liberty to measure the adjacent fields of block no. 230, if it is necessary to fix the boundary marks of the suit land.
4. Plaintiffs are directed to deposit the commission fee in the office of T.I .L.R Rahuri, as per rules .
5. Plaintiffs are directed to file the xerox copy of the receipt of deposit of commissioner fee in the Court within two weeks from the date of this order.
6. Issue letter to T.I.L.R Rahuri, accordingly.

Date: 19-11-2013.

(**R.V. Wanwadi**)
Jt. Civil Judge (J.D.)
Rahuri