

ORDER PASSED BELOW EXH. 5 IN R.C.S NO. 760/2013

1] This is an application filed by the plaintiff 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 for fixation of it's boundaries as per the record of rights.

2] Perused the application and say filed on it by defendant no. 7. Rest of the defendants failed to appear or file the say.

3] Heard Ld. Advocate Shri. S.K. Bhandari for the plaintiff. Ld. Advocate Shri. E.R. Khapke for defendant no. 7 failed to argue the application.

4] I have gone through the pleadings of the suit. It is the contention of the plaintiff that the defendants are trying to encroach upon the suit land. Therefore, in order to have the decision of case on merit and to elucidate the dispute between the parties, appointment of Court Commissioner is necessary for the fixation of the boundaries. It is further contention of the plaintiff that if any encroachment is found, the TILR be directed to file the report regarding that. It seems that the plaintiff himself has stated the four boundaries of the suit land in his plaint itself. As per Sec. 135 of Maharashtra Land Revenue Code if any dispute arises concerning the boundary of a village or a field or a holding which has not been surveyed, or if at any time after the completion of a survey, a dispute arises concerning the boundary of any village, or survey number or sub division of a survey number, it shall be decided by the Collector, after holding a formal inquiry at which the Village

Officers and all persons interested shall have an opportunity of appearing and producing evidence. As per Sec. 136 (1) of the Maharashtra Land Revenue Code, the Collector may on the application of a party interested, demarcate the boundaries of a survey number or a sub division and construct boundary marks thereon. (2) The State Government may make rules for regulating the procedure of the Collector in demarcating the boundaries of a survey number or of a sub-division, prescribing the nature of the boundary marks to be used, and authorizing the levy of fees from the holders of land in a demarcated survey number or sub-division. Sec. 138 of Maharashtra Land Revenue Code provides that the settlement of boundary under Sec. 136 shall be determinative of the proper position of the boundary line, or boundary marks and of the rights of the land holder on either side of the boundary fixed in respect of land adjudged to appertain or not to appertain to their respective holdings. From this provisions it reveals that there are specific provisions provided u/s 136 and 138 of Maharashtra Land Revenue Code to demarcate the boundaries of a sub-division and to construct boundary marks thereon and Collector is an authority to do that. In view of the above provisions in my view the court commissioner cannot be appointed to measure the suit lands to demarcate it's four boundaries because parties have to move an application as contemplated u/s 136 of the Maharashtra Land Revenue Code before the collector.

6] However, after going through the pleadings of the plaintiff it reveals that there is an allegation to the effect that defendants have encroached upon the suit land. Even in the application the said fact is averred. Thus it reveals that the plaintiff has an apprehension in his mind on the point of encroachment. In order to determine the fact of encroachment if any, measurement of the land through an expert is necessary. It has been held by Hon'ble Bombay High Court in the case of **Kisanlal Maniklal Rathi Vs.**

Dinkar Yashwant Patil 2004 (1) Mah.L.J. 138 that if there is dispute about an encroachment or dimension of a site it is always desirable to get the field measured by the an expert and find out the exact area encroached upon. Oral evidence cannot conclusively proved such a issue. So also, the said ratio is settled ratio. In view of the said ratio and the pleading of encroachment, it is necessary to appoint TILR who is an expert as a court commissioner for measurement of the land. After going through the pleadings of the parties it reveals that the plaintiff has his land in block No. 930 of village Deolali Prawara, Tal. Rahuri. Whereas, the defendants have their lands in block no. 931, 929, 916, 934 and 935 of village Deolali Prawara, Tal. Rahuri. Therefore, it is necessary to order the measurement of entire land of block no. 916, 929, 930, 931, 934 and 935 of village Deolali Prawara, in order to find out the fact of encroachment if any. In the absence of the measurement of entire block no. 916, 929, 930, 931, 934 and 935 of village Deolali Prawara, the correct position cannot be brought on record. Even it would be just and proper to give liberty to the T.I.L.R. to measure the adjacent land of block no. 916, 929, 930, 931, 934 and 935 of village Deolali Prawara if it is necessary to determine the fact of encroachment, if any. It is but obvious that just by measuring the suit land, the correct position regarding the encroachment cannot be ascertained. For that purpose the entire block no. 916, 929, 930, 931, 934 and 935 of village Deolali Prawara, is required to be measured. 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. 916, 929, 930, 931, 934 and 935 of

village Deolali Prawara and to submit his report alongwith detailed map showing encroachment if any, 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. 916, 929, 930, 931, 934 and 935 of village Deolali Prawara, if it is necessary to find out the fact of encroachment, if any.
4. This commission is limited only to the extent of finding the fact of encroachment if any and not for fixation and demarcation of the boundaries.
5. Plaintiff is directed to deposit the commission fee in the office of T.I .L.R Rahuri, as per rules .
6. Plaintiff is 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.
7. Issue commission writ to T.I.L.R Rahuri, accordingly. The TILR shall carry out the commission work as per the provisions of Survey Manual.

(**R.V. Wanwadi**)

Jt. Civil Judge J.D. Rahuri
Tal.Rahuri Dist.Ahmednagar

Date: 06.04.2015