



R.C.S. No. 141/2020
Sunanda Vs Piraji and others
CNR No.MHAH220008902020

ORDER BELOW EXH.28

1] Defendants have filed this application and prayed for appointment of Court Commissioner.

2] The plaintiff has filed no objection to appoint TILR as court commissioner.

3] Defendants submitted that, plaintiffs and their lands are adjacent. Plaintiff has measured her land however defendants have not measured their land. The dispute arose on account of boundry marks. Therefore, according to them, it is necessary to appoint Court Commissioner for measurement of Gut no. 371 to verify correctness of the boundry marks.

3] The suit is for permanent injunction that defendants no.1 to 4 committed encroachment in the field of the plaintiff by destroying common bandh and tried to stop the use of road. The defendants denied that they have committed any encroachment as alleged. Thus, the issue of encroachment and boundry mark is the crux of the matter. In order to determine whether there is any encroachment, it is always desirable to appoint an expert and get the fields measured from him to find out the truth in the allegations of encroachment. The fact of encroachment cannot be proved merely by oral evidence of the parties. So also, such oral evidence is not conclusive to prove such an issue. Therefore, it is necessary to get the fields measured from cadestral surveyor in a suit for doubts. The Hon'ble Apex Court and Hon'ble High Courts have time and again reiterated the need for appointment of Court Commissioner in boundary disputes. It seems from

the contents of the application that the parties are praying for appointment of the Court Commissioner so that the dispute between the parties can be put to rest.

4] Admittedly commissioner cannot be appointed for the purpose of collecting evidence. In the present case, the defendants have prayed for appointment of Court Commissioner for the purpose of carrying out measurement which in fact is necessary for the purpose of decision of the suit. Further plaintiff has filed no objection to grant said application. It cannot be said that it is for collection of evidence. It is the duty of the Court to settle the dispute between the parties and this function cannot be delegated to any other authority. However, the Court is empowered to take assistance of other authorities/experts to help it to arrive at a right conclusion in a matters where the Court cannot inquire effectively. Whenever any dispute about boundry marks and encroachment is raised, it is necessary to carry out local inspection and measurement to elucidate the matter. It can be done only on the spot and not in the Court room. Therefore, for such purposes Court Commissioner is the proper authority to do the same. Further, cadestral surveyors are appointed as Court Commissioner for carrying out measurements. They possess the requisite knowledge and expertise for that purpose. It is not the delegation of function of a judge or the Commissioner is not authorized to decide the dispute between the parties. He is merely assisting the Court in performing its functions.

5] The nature of dispute demands that the Court Commissioner should be appointed for the purpose of measurement. It will help in just decision on merits. However, in order to know whether the boundry is straight or zig zag, it is necessary to measure the entire gat number 371 wherein the fields of the parties are situated. It is a fit case for appointment of Court Commissioner. As the application is filed by defendants, the cost of the measurement will have to be borne by them. In view of the aforesaid

discussion following order is passed.

ORDER

1. The application is allowed.
2. The TILR Karjat is appointed as Court Commissioner to carry out measurement of field Gat no.371 situated at Khed, Tq. Karjat, Distt. Ahmednagar.He further directed to carry out measurement of Gat No 371 and shall file report showing encroachment in different colour and specify exact area of encroachment in map.
3. Defendants to bear the expenses for the measurement and to deposit the same within one month from today with the office of TILR and to produce the documentary proof thereof on record.
4. Defendants to supply the requisite documents to the Court Commissioner as may be required by him for carrying out the measurement and to cooperate with the Court Commissioner.
5. The TILR is directed to carry out measurement and to submit report as early as possible.
6. Issue writ to the TILR.

Date : 09.10.2020.

(D. J. Patil)

Civil Judge (Jr.Dn), Karjat.