

ORDER BELOW EXH.8 IN R.C.S.NO. 505/2023

(CNR No.MHAH250016842023)

This order shall dispose of application filed by the plaintiff for appointment of Taluka Inspector of Land Records (T.I.L.R.) as a court commissioner under Order XXVI Rule 9 of Code of Civil Procedure.

2. Plaintiff submits that suit is filed for perpetual injunction and other consequential reliefs. The suit property mentioned in plaint para 1 is the ancestral property of her husband and brother of her husband i.e. defendant No.1. It was partitioned between her husband and brother of her husband by metes and bounds out of which land admeasuring 79 R in Gat No.636 came to the share of plaintiff. Even if the suit property is partitioned, still it was not demarcated and hence, plaintiff got the suit property measured and the surveyor demarcated the boundaries of complete Gat. However, boundaries of the plaintiff's share of the land were not demarcated. Defendants took advantage of it and they are looking to encroach in the suit property of plaintiff and obstructing plaintiff to her possession over the suit property. Hence, plaintiff told defendants on 3.6.2023 to measure the complete Gat and also demarcate the boundaries of their respective lands, however, defendants refused for such measurement and told plaintiff to get her land measured on her own. Hence, plaintiff again asked TILR, Parner for measurement. However, TILR, Parner told that without the consent of adjoining land holders, the measurement cannot be carried out. TILR, Parner also told to get the measurement through the court. Hence, it is necessary to appoint TILR as court commissioner for carrying out measurement of Pothissa of 79 R land in Gat No.626 belonging to the plaintiff and to demarcate the boundaries of the plaintiff's land to find out encroachment, if any and to file report alongwith the map.

3. Suit is proceeded ex parte against defendants. Hence, the application proceeded without say against the defendants.

4. Heard learned advocate for plaintiff. Perused record. Suit is filed for measurement and demarcation of the boundaries of suit property. Further, suit also involves the relief of possession of encroached portion and for perpetual injunction. The suit is proceeded ex parte against defendant No.1 to 5. Plaintiff has filed her evidence affidavit. Pleading of plaintiff suggests that there is dispute as to the alleged encroachment due to the non fixation of boundary marks in the lands of plaintiff and defendants in Gat No.626. The 7/12 extract of Gat No.626 filed on record shows that plaintiff and defendants are having lands in Gat No.626. It has been alleged that after the partition of Gat No.626, the land belonging to plaintiff has not been demarcated. The suit involves the relief of measurement and fixation of boundaries of the Pothissa belonging to the plaintiff as well as the suit involves the relief of possession of encroached portion. Considering the nature of the suit and reliefs claimed as well as considering the dispute as alleged by plaintiff, it would be appropriate to appoint the TILR, Parner as court commissioner to settle the controversy in dispute. Hence, it would be appropriate to appoint the court commissioner for carrying out measurement of Pothissa of plaintiff admeasuring 79 R in Gat No.636 and to find out the encroachment, if any. At this stage, it would not be appropriate to fix the boundaries and bandh of the plaintiff's land considering that the same has also been sought by the plaintiff as one of the final reliefs in the present suit. Hence, allowing the court commissioner to fix boundaries and bandh at this stage would amount to pre-trial decree. Hence, at this stage, it would only be appropriate to appoint court commissioner for carrying out measurement of Pothissas of plaintiff and defendants and to find out encroachment, if any. Hence, the order:

ORDER

1. Application is partly allowed.
2. T.I.L.R., Parner is hereby appointed as court commissioner to carry out measurement of suit property bearing Gat No.626 situated at village Karjule Harya, Tal. Parner, Dist. Ahmednagar and to measure the area

of *pothissas* of the plaintiff and defendants and to find out encroachment, if any.

3. Court commissioner is directed to inform all the concerned parties in advance about the date of measurement.
4. T.I.L.R. is directed to forward the map of measurement alongwith report by showing the exact encroached portion if any, within one month from today.
5. The expenses of court commissioner shall be payable by the plaintiff.
6. Issue writ accordingly.

Date : 19/07/2025

(N. S. Sabnis)
Jt. Civil Judge, J.D., Parner.