



RCS No. 96/2021  
Purushottam Kadam and others  
Vs. Rajendra Theng and another

ORDER BELOW EXH. 14

The present application is filed on behalf of plaintiffs under Order XXVI Rule 9 of the Code of Civil Procedure for appointment of T.I.L.R Chikhi as a court commissioner for joint measurement of lands of plaintiffs and defendant no.1.

2. Ld. Advocate for the plaintiffs has argued that the plaintiffs are owners of land in gat no.359 situated at village Khandala Makardhwaj , Tq. Chikhli, Dist. Buldana. The plaintiff no.1. is holder of 0H.82R land in gat no.359. The plaintiff no.2. is holder of 0H.81R land in gat no.359. The plaintiff no.3. is holder of 0H.82R land in gat no.359. The plaintiff no.4 is holder of 0H.40R land in gat no.359. The learned advocate for the plaintiffs has further argued that the defendant no.1 is also holder of 0H.41R land in gat no.359. The land of defendant no.1 is situated towards the southern side of land of plaintiff no.4. The plaintiff no.3 is owner of 0H. 82R land in gat no.359. However, due to typographical error, the name of the plaintiff no.3 is mutated to the extent of 81R land to the 7/12 extract of gat no.359. The plaintiff has taken necessary proceeding for correction of the same. On 22.05.2021 the plaintiffs found disturbance of boundary marks. The learned advocate for the plaintiffs has further contended that the defendant no.1 is the adjacent land holder and he has encroached upon plaintiff's land. There is boundary dispute between the plaintiffs and defendant no.1. The defendant no.2 is DYSLR, Chikhli. The defendant no.2 is a

pro-forma defendant, no relief is sought against him. Therefore, learned advocate for the plaintiffs has prayed for measurement and demarcation of boundaries suit property and land of defendant no.1. by appointing T.I.L.R. as Court commissioner. Ld. Advocate for the plaintiffs has further argued that the plaintiffs are ready for joint measurement of the lands of the plaintiffs and the defendant no.1. The plaintiffs are ready to bear the expenses of the joint measurement.

3. The suit has proceeded exparte against defendants. The defendants have failed to file say to present application. Therefore, the application proceeded without say of defendants.

4. The plaintiffs have filed on record 7/12 extracts of gat no.359 at Exh.12. On perusal of the same it appears that the plaintiffs and defendant no.1 are holders of land in gat no.359 and adjacent land holders. The plaintiffs have specifically averred that the defendant no.1 encroached upon suit property. Thus, from the pleading it appears that the dispute between the parties is about boundaries and the same could be resolved by appointing T.I.L.R. as a court commissioner.

5. The plaintiffs have filed the present suit for the measurement, fixation of boundaries and removal of encroachment. O.XXVI R.9 of the CPC specifically provides that in any suit in which the court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute the court may issue commission to such person as it thinks fit. Thus, it is settled position

of law that, in order to ascertain the boundaries and to resolve boundaries disputes, the best evidence would be measurement of land by an expert witness. The T.I.L.R. is an independent agency and measurement carried on by such agency would not cause prejudice to any of the parties. Further the defendants would be at liberty to cross examine TILR. Hence, no prejudice would cause to the rights of the defendants. Thus, appointment of T.I.L.R will help the court to finally decide the suit on merit . Hence, following order:

**ORDER**

- (1) The application is allowed.
- (2) The T.I.L.R. Chikhli is hereby appointed as a Court Commissioner to jointly measure the lands of the plaintiffs and the defendant no.1 in gat no.359 in village Khandala Makardhwaj, Tal. Chikhlli, after considering the title deeds of the parties, if any, and 7/12 extract of fat no.359 and note down the actual measurement in the joint measurement map itself showing the precise and concise area under encroachment, if any and demarcation of boundaries.
- (3) The plaintiff are directed to bear the expenses of Court Commissioner.
- (4) The plaintiffs are supply the requisite documents to the Court Commissioner.
- (5) The Court Commissioner is directed to carry out measurement after issuing notices to both parties and preferably in presence of

both the parties and to file his report within three months from the date of receipt of the commission writ.

(6) Issue commission writ accordingly to the T.I.L.R., Chikhli.

Place: Chikhali

Date: 08.09.2022

(P.R. Kulkarni )

Jt. Civil Judge, Junior Division,  
Chikhli