

:: ORDER BELOW EXH. 18 IN REG. CIVIL SUIT NO. 76/2017 ::
(Haribhau and others v. Bharat and others)

01. By this application the plaintiffs are seeking to appoint T.I.L.R. Partur as a Court Commissioner for measurement of the suit property and fixation of its boundaries.

02. In short, the contention of the plaintiffs is that, they have filed this suit for declaration of ownership, removal of encroachment and fixation of boundaries in respect of land located in Gat No. 05 admeasuring 5 H and 16 R from the original land admeasuring 11 H 61 R. As per their contention, the defendants being the adjacent owners of the suit property have encroached upon it and thereby obstructing their possession over the suit property. As per their contention, in order to ascertain the exact extent of encroachment committed by the defendants, it is essential to appoint an expert i.e. T.I.L.R., Partur as Court Commissioner for measurement of the suit property.

03. The defendant no. 1 and 2 have filed an applications below exh. 21 for appointment of court commissioner. They have submitted that they have their land admeasuring 7 H and 2 R towards eastern side of land of plaintiffs and towards western side there is 2 H and 20 R land is of defendants. There is common boundaries between these lands since long. Plaintiffs does not have any concern about this land. Hence they prayed to appoint T.I.L.R. Partur for measurement of their land.

04. The defendant no. 3 has also filed an applications below exh. 22 for appointment of court commissioner. She has submitted that she has her land located in Gat no. 7 admeasuring 3 H and 3 R

towards the northern side of land of plaintiffs. Plaintiffs does not have any concern about this land. Hence she prayed to appoint T.I.L.R. Partur for measurement of her land.

05. Heard learned advocates of the plaintiffs and defendants. The learned advocates have submitted that, in order to ascertain the exact encroachment upon the suit property, it is essential to appoint the expert as a Court Commissioner for carrying out the measurement of the same. There is no objection for appointment of court commissioner by defendants as they have filed applications for same purpose.

06. While looking at the contentions of the plaintiffs, it appears that, the entire dispute now revolves around the issue as to whether any encroachment is committed or not over the suit property. It is needless to mention that, it is a settled law that, whenever there is a dispute about the encroachment, it is always essential and expected to get the measurement carried out from the expert so as to ascertain the exact encroachment. While looking at this particular circumstance in respect of the dispute between the parties and while looking at the allegations made by the plaintiffs, the measurement of the suit property as well as land situated adjacent to the suit properties from all sides simultaneously and jointly appears as necessary, so as to elucidate the matter in dispute between the parties. While looking at the nature of the dispute, it appears that, the measurement of the properties i.e. suit property and the property situated from its all sides will definitely help to elucidate matter and it will finally adjudicate the dispute. Therefore,

considering this aspect and the nature of dispute, following order is passed.:

:: O r d e r ::

- 1) The application is allowed and T.I.L.R., Partur is hereby appointed as a Court Commissioner for measurement of the suit property as well as property situated from all the four boundaries of the suit properties situated at village, Brahmanwadi Tq.Partur.
- 2) The Court Commissioner to carry out the measurement of the land Gat no. 5 and 7 and the survey numbers situated adjacent to all four boundaries of the this survey number after issuing notices to both the parties and all concerned as per rules and submit his report along with map of the measurement carried out by him within a period of two months from the date of receipt of this order.
- 3) The Court Commissioner to show the encroachment, if any, found in the suit property or the property situated adjacent to the suit property in his report specifically, by fixing the boundaries.
- 4) The plaintiffs and defendants are themselves to bear the requisite charges of measurement of the properties through Court Commissioner and deposit the same with the office of the Court Commissioner within a period of fifteen days from the date of this order and submit documentary evidence to that effect in this Court.

- 5) Issue Commission Writ accordingly along with copy of
plaint.

Date : 20-12-2018

Sd/-
Jt. Civil Judge Jr. Division,
Partur