

ORDERIN R.C.S.NO. 120/2015.

(Baliram...vrs...Ramrao)

1. Plaintiffs have filed this application under order 26 R. 9 of the Code of Civil Procedure. (for short The C.P.C.) for appointment of court commissioner for the purpose of carrying out of the measurement of the suit property situated at village Hiwrakabli, Tq- Jafrabad, Dist- Jalna.
2. It is the contention of plaintiffs that, they are the owners of 0.85 R. land in the gut no. 172. However, defendants have made some encroachment over their land. So, on dated 21/04/2015 they measured the suit property. But in the said measurement concerned nauthority failed to show the exact encroached area. Hence, this application.
3. Defendants have filed their say at Exh. 17 and opposed the application. It is their contention that, plaintiffs have already got the suit property measured, so there is no need of again measurement. It their contention that, towards the east side of suit property there is 33 feet wide and 4-5 feet deep road and towards the west side there is a 'Nala' so it is not possible for anybody to make encroachment over the suit property. Hence lastly they prayed to reject the application.
4. Learned advocate for the plaintiffs submitted that, plaintiffs are the owners and possessors of the suit property. Plaintiffs filed the suit for removal of encroachment and for possession against the defendants in respect of suit land. Defendants are adjoining land holders and they have encroached upon the suit property. So, In order to ascertain the exact portion encroached by the defendants the suit property is needs to be measured by appointing

T.I.L.R., Jafrabad as court commissioner.

5. Perused the application, record of the case and heard learned counsel for the plaintiff. This is a suit for removal of encroachment and possession . Plaintiff is claiming encroachment over his land at the hands of defendant. It is acknowledge principle of law that, in a suit for removal of encroachment and for possession, court commissioner in the form of T.I.L.R., must be appointed in order to bring on record the actual situation of the disputed land. So, the measurement of suit property by T.I.L.R., will help in elucidating the matter in controversy. However, Considering the rival pleadings and actual matter in controversy, the measurement of 0.85 R. land in gut number 172 will suffice the purpose and will help the in arriving in proper conclusion and effective adjudication of dispute. In the given fact and circumstances, I find it just and proper to direct measurement of gut number 20 situated at village Jafrabad, Tq- Jafrabad, Dist- Jalna through appointing court commissioner. Hence, I proceed to pass following order.

ORDER

1. The application at Exh.16 is allowed.
2. The T.I.L.R., Jafrabad is appointed as court commissioner and directed to measure the 0.85 R. land in gut number 172 situated at village Hiwrakabli, Tq- Jafrabad, Dist-Jalna. He shall specify the exact area and extent of the plaintiffs land therein by specifying exact extent and description of encroachment thereon, if any.
3. The T.I.L.R.,Jafrabad shall submit the map along with the report of measurement to this court within one month from the date this order.
4. The parties to supply all relevant documents to T.I.L.R.,Jafrabad for

necessary measurement.

5. The said measurement be carried out by giving seven days prior notice to the parties concerned as per rules.
6. The plaintiffs to deposit the necessary charges of measurement with the office of T.I.L.R., Jafrabad as earliest.
7. Issue commissioner writ accordingly.

Date:- 04/10/2016.

Y. S. Akhare.
Jt. Civil Judge Junior Division,
Jafrabad.