

**Order below exh.49**

1. This is an application filed by the plaintiff for appointment of T.I.L.R, Badnapur as a Court Commissioner to measure the suit land and for fixation of boundaries under Order XXVI Rule 9 of the Code of Civil Procedure.

2. Plaintiff contended that they are the owner and possessor of the suit property bearing gat no.210, admerausing 5H 87R, situated at village Nanegaon, Tq.Badnapur, Dist.Jalna. Defendants are adjacent land holder of the plaintiff's land from East, South, North side in gat no.203, 208, 209, 211 and they are trying to damage the bandh over the boundaries of the suit property. Not only this defendants are also creating a road in the suit property, even though no such road is exist there. The disputes between the parties are in respect of boundaries, bandh of which they damaged, so it is crystle clear that real controversy is in respect of bandh, boundaries. Hence, it is necessary to measure the entire suit land bearing gat no.210, 5H 87R, situated at village Nanegaon, Tq.Badnapur, Dist.Jalna by way of appointing T.I.L.R. as a Court Commissioner. It is necessary to measure the suit property to arrive a correct conclusions for real controversy, so considering all these aspects, plaintiffs prayed for allowing the application.

3. Ld. advocate of defendants filed their say on Exh.51 and contended that the application filed by the plaintiff is not tenable. Plaintiff has filed the present suit against defendants for the relief of perpetual injunction. Plaintiff has not pleaded

anywhere about encroachment on the suit property. In the present application plaintiff contended that defendants are creating approach road on the suit property, but the said fact has not been pleaded anywhere in his plaint. Plaintiff has filed the present application only for collection of evidence. By way of the present application plaintiff wants to collect the evidence. Hence, they prayed for rejection of the application.

4. Heard learned advocate of plaintiff and learned advocate of defendants.

5. Learned advocate of the plaintiff argued that defendants are trying to make approach road from his agriculture land i.e. suit property. Defendants are also creating interference on the boundaries of suit property. Learned advocate of the plaintiff also submitted that he is ready to measure the properties which are adjacent and owned and possessed by defendants. In support of the argument learned advocate of the plaintiff placed reliance upon judgments in the case of 1. Raghunath Kashinath Chavan Vs. Sakharam Maroti Chavan & another, 2019(5) ALL MR 526, 2. Shri Saunsthan Gokarn Partagal Jivottam Vs. Shri Narayan Raghunath Desai & others, 2019(2) ALL MR 588 & 3. Sulemankhan Mumtajkhan & others Vs. Bhagirathibai Digambar Asalmol & another, 2014(5) ALL MR 552. Learned advocate of defendants argued that the application is not maintainable as the suit of the plaintiff is filed for perpetual injunction and not for recovery of possession on encroached portion. Hence, prayed for rejection of the application.

6. It is the contention of the plaintiff the defendants are adjacent land holders of plaintiff from East, South, North side bearing gat no.203, 208, 209, 211 and they are trying to damage the band over the boundaries of the suit property and also creating a road in the suit property. Therefore, plaintiff wants to measure the suit property bearing gat no.210, admeasuring 5H 87R of the plaintiff by appointment of T.I.L.R. as a Court Commissioner. Plaintiff has filed the present suit against defendants for the relief of perpetual injunction regarding property bearing gat no.210 admeasuring 5H 87R situated at village Nanegaon, Tq.Badnapur, Dist.Jalna.

7. It appears from the pleading and written statement of the defendants that there is a dispute regarding boundaries between plaintiff and defendants. There is also dispute regarding approach road between the parties. To dissolve the real controversy between the parties on the ground of boundaries and approach road and to arrive at a correct conclusion and to decide the suit on merit, it is necessary to measure the suit property and the properties adjacent to the suit properties which are in possession of the defendants bearing gat no.203, 208, 209, 211. Only by measuring the suit property of the plaintiff, the dispute cannot be resolved. Joint measurement of plaintiffs suit property and defendants property is necessary to resolve controversy. The joint measurement is very decessive to determine the dipute and boundaries and approach road between the parties. In the present application plaintiff only prayed for measurement to the extent of only suit property

which is in his possession. To dissolve the real controversy, it is necessary to appoint Court Commissioner as a TILR for joint measurement of the suit property and adjacent land holders of the suit property.

8. The Hon'ble High Court in the above cited judgement held that appointment for local investigation in the case of boundary dispute is necessary for proper adjudication of matter in the case of perpetual injunction. Furthermore, the Hon'ble High Court also held that the object of local investigation is not so much to collect evidence, but to obtain evidence which from its peculiar nature can only be had on the spot. The cases of boundary disputes and disputes about the identify of lands are instances when a Court should order a local investigation under Order XXVI Rule 9 of C.P.C.

9. Considering the ratio laid down by the Hon'ble High Court and the facts of the present case there is a boundary dispute and dispute regarding approach road between the parties. In such circumstances, the joint measurement is decessive to determine the dispute between the parties. Hence, the application is granted on following way.

### **ORDER**

1. The application is allowed.
2. T.I.L.R., Badnapur is hereby appointed as a Court Commissioner to measure the lands bearing gut no.210 to the extent of 5H 87R and gat no.203, 208, 209, 211 situated at village Nanegaon, Tq.Badnapur, Dist.Jalna and also to file the report regarding the measurement.

3. Plaintiff is directed to deposit the entire measurement fee to the concern office within one month.
4. The Court Commissioner is directed to measure the lands and to prepare map of the said lands along with a detailed report of commission work and to submit it in the Court without fail.
5. The plaintiff is directed to provide necessary land revenue records to the Court Commissioner.
6. Issue letter to T.I.L.R., Badnapur accordingly.

Date:- 17.07.2023.

(Smt.P.V.Raut)  
Civil Judge (J.D.), Badnapur.