

Order below Exhibit No.52 in R.C.S. No.225/2010

1. This is suit for declaration and injunction.
2. The plaintiff has filed present petition for compliance and submitting report as per order of Court Commissioner under Order XXVI Rule 9 of The Code of Civil Procedure, 1908 passed below exh 34 & 47.
3. It is the contention of the plaintiff that The Hon'ble Court had appointed Court Commissioner as per order passed below Exhibit No.34, dated 19.07.2011 on the merit. As per order of Hon'ble Court, the Court Commissioner T.I.L.R. Hatkanangale was submitted report dated 19.11.2011 that measurement of the suit property was not possible due to standing of crops.
4. It is further contention of the plaintiff that the plaintiff had filed second application for further compliance as per report of T.I.L.R at Exhibit No.47 and Hon'ble court has passed order for deposit requisite fees to the plaintiff in the court dated 16.03.2012. Thereafter T.I.L.R. has submitted report dated 20.07.2012 that due to standing of crops measurement of suit property will be not possible. Thereafter the plaintiff has filed present application for direction given to the T.I.L.R. for measurement of suit property and submit report as per order passed below Exhibit Nos. 34 and 47.
5. The defendant No.2 has filed his say at Exhibit No.53 and denied the averment of the said petition and strongly objected to present petition on the main ground that already crops were standing on the suit property. Therefore, no measurement will be possible. It is the contention of the defendant No.2 that already commission writ was forwarded to the T.I.L.R. Therefore, it is not just and proper for sending again and again for measurement of the suit property to the T.I.L.R. The plaintiff is trying to distribute or partition of the suit property through Hon'ble Court. Hence, on these grounds no measurement for partition will be allowed. Lastly, he prayed for rejection of the present petition with cost.
6. Heard learned counsel for the plaintiff Shri. B.R.Patil and learned counsel for defendant No.2 Shri. R.V.Mudgal. Both are

reiterated as per their pleadings. Shri. B.R.Patil has argued that already two times commission writ were forwarded to the T.I.L.R. and due to standing of crops commission works will be postponed and reports were send with reason by the T.I.L.R. Hatkanangale disctrict Kolhapur.

7. On considering the entire record it reveals that the plaintiff had applied for appointment of Court Commissioner on 29.11.2010 and defendant No.2 and defendant Nos.3 to 6 have filed their say at Exhibit Nos. 36 and 37 respectively. Such application Exhibit No.34 was allowed by my learned predecessor on 19.07.2011 as per order plaintiff had deposited the commission fees Rs.2,000/- dated 30.08.2011. Thereafter report of the T.I.L.R. was sent to the Court on 19.11.2011. On perusal of report of T.I.L.R. dated 19.11.2011, it appears that due to standing of sugarcane crops measurement work/commission work was not done and it was not possible. So, after the cutting of sugarcane crops and depositing of Rs.1,000/- of revisiting fees by the concerned parties, this commission writ will be sent back for commission work.

8. As per T.I.L.R report the plaintiff had filed an application at Exhibit No.47 and deposited revisiting fees of Rs.1,000/- dated 27.03.2012 as per order. Thereafter commission writ was send to the T.I.L.R. for commission work. Thereafter the T.I.L.R. was send report to the Court on 20.07.2012. On perusal of report of T.I.L.R. dated 20.07.2012, it appears that due to standing of sugarcane crops measurement work/commission work was not done and it was not possible. So, after the cutting of sugarcane crops and depositing Rs. 1,000/- of revisiting fees by the concerned parties, this commission writ will be sent back for commission work.

9. As per this report, the plaintiff has filed present petition along with affidavit for direction given to the T.I.L.R. for measurement of suit property and submit report as per order passed below Exhibit Nos. 34 and 47. On perusal of the say of the defendant No.2, it appears that it was not annexed with support of affidavit and already order of appointment of Court Commissioner was passed below Exhibit No.34. Present petition is filed by the plaintiff for compliance of Exhibit Nos.34 and 47. The plaintiff has filed copy of writ petition No.9094/2011 on record along with list Exhibit No.

51. On due respect to order of the Hon'ble Bombay High Court, on perusal of this order it seems that the defendant No.2 had filed writ petition for challenging order of appointment of Court Commissioner passed below at Exhibit No.34 and said writ petition is dismissed by the Hon'ble Bombay High Court. The defendant No.2 has not produced copy of stay or order of Hon'ble High Court challenge in the appellate Court on the record.

10. On perusal of entire record, both parties are failed to produce photographs, measurements and real position of the suit property of this stage to show what is the position of the suit property.

11. The defendant No.2 has not produced any document or order of challenging the order of the Hon'ble Bombay High Court on the record. This petition has filed for compliance and submitting report of commission work passed on Exhibit Nos. 34 & 47. In my view there is no irreparable loss would be sustained to the defendant No.2, if this petition is allowed. Therefore, I have no hesitation to allow this petition and issuing commission writ to the T.I.L.R. for commission work on depositing revisiting fees of Rs.1,000/- by the plaintiff. Hence, I pass the following order.

ORDER

1. The petition Exhibit No.52 is hereby allowed.
2. The plaintiff is directed to deposit revisiting fees of Rs.1,000/- (Rs. One Thousand Only) in the court within Eight (8) days from today.
3. Issue commission writ as per order below Exhibit Nos. 34 & 47 and as per rule on p. f.

Ichalkaranji.
Dated:- 24-01-2013.

sd/-
(G.M.Kolhapure)
5th Jt.C.J.J.D,Ichalkaranji,
District – Kolhapur.