

Order below Exh. 65 In R.C.S.No. 7/2012

1. This is an application moved by plaintiff for appointment of T.I.L.R. as court commissioner for measurement of suit property 1-C.

2. It is contended that, he has filed suit for injunction and mandatory injunction. It is contended that, the defendant No.1 has committed encroachment over suit property 1-C and thereby constructed some part of construction of his house. However, defendant has denied the any encroachment. Therefore, it is contended that, to resolve the controversy between the parties it is necessary to measure the suit property 1-C by appointing T.I.L.R. as court commissioner.

3. The defendant No.1 has filed say below Exh. 79 and strongly opposed this application, that no evidence is brought on record regarding alleged encroachment. It is further contended that, by way of court commission applicant want to collect the evidence. Therefore, application is not maintainable. Therefore, it is prayed that, application be rejected.

4. After having heard both the sides and going through the record, it appears that, plaintiff has averred that, defendant No.1 has committed encroachment and constructed some part of the house in the suit property 1-C. However, said fact is denied by defendant No.1. It appears that, mandatory injunction for removal of encroachment is also sought. Therefore, it appears that, there is controversy between the parties as regards the actual boundaries of their respective properties. Therefore, to decide the controversy between the parties commission is necessary. If T.I.L.R. is appointed to ascertain the boundaries of the suit properties then the dispute as regards the boundary will be resolved, so also, report of commissioner

will through light whether there is encroachment over the suit property. If commission is carried out in presence of both the parties no prejudice will be caused to any of them. As such, it is clear that, appointment of commissioner will be helpful to resolve the controversy between the parties. Therefore, it cannot be said that, appointment of commissioner will result in collecting evidence.

5. Purpose will be served to direct commissioner to measure C.T.S.No. 1186, 1187 and 1188 situated at Takawade and demarcated its boundaries, so also he should show the construction of respective parties alongwith measurement so that actual situation on spot can be ascertained. Therefore, considering the entire facts and circumstances of this case, appointment of T.I.L.R. as court commissioner deserves to be allowed. Hence, following order.

**Order**

1. The application (Exh. 65) is allowed.
2. Dy. Inspector of land records is hereby appointed as court commissioner to measure suit property.
3. The commissioner shall measure suit properties in presence of both the parties keeping in view the directions in order.
4. The commissioner shall file report alongwith measurement map as early as possible.
5. The applicant shall bear the costs of commissioner.
6. The writ be issued on P.F.

Date : 17-2-2017.

Sd/-  
Civil Judge, Sr.Dn.  
Jaysingpur.

I affirm that the contents of this P.D.F. file Judgment are same, word to word, as per the original Judgment.

Name of the Stenographer	S.R. Ladekhan
Name of Court	Civil Court, Sr.Dn. Jaysingpur.
Date of decision	17/02/17
Order signed by the P.O. on	17/02/17
Order uploaded on	18/02/17