

**R.C.A.No. 113/2015**

**Sheshrao V/s. Ramchandra & oths.**

CNR.No. MHLA010022022015

**Order below application vide Exh. 23 for appointment of  
Court-Commissioner.**

**(Passed on dated 9.12.2019)**

1. Read the application for appointment of Court-Commissioner i.e. T.I.L.R. for the joint measurement of the lands of the plaintiff and defendant, and the reply vide Exh.25 of respondent on it. The respondent has opposed the application. Heard, the Learned Advocate for the appellant and respondent and they have argued as per the submissions made in the application and reply respectively.

2. The learned advocate for the appellant has relied upon the ratio laid down in the case of **Vachhalabai w/o. Kundlik Gavane Vs. Chinkaji s/o. Malhari Jadhav & oth.** the Hon'ble Bombay High court Bench at Aurangabad has held that, “the dispute as to the encroachment upon the land of the plaintiff, and two reports from T.I.L.R. office produced on record, one indicating encroachment by defendants and another indicating no encroachment. It is fit case wherein Court ought to have exercise the power under Order 26 Rule 10 of the Code of Civil Procedure for joint measurement of the land by appointing the Court-Commissioner”.

3. The appellant/original defendant has filed the present

appeal against the judgment and decree dated 30.4.2015 passed in R.C.S.No.697/2003, being the suit has been decreed and directed the defendants to deliver the possession of 40 R land of suit property to the plaintiff. The plaintiff is the owner of the land bearing Gat No.185 i.e. suit property and defendant is the owner of the land Gat No.183, and the said lands are adjoining to each other. The plaintiff got measured his land through T.I.L.R. on 29.7.2003 and produced the measurement map on record showing the encroachment of the defendants to the extent of 65 R on the suit property. It further appears from the record that the Court-Commissioner/Surveyor Satyawan Surywanshi attached to the T.I.L.R. Office, Latur was appointed by the learned lower court, and he had carried out the joint measurement of the suit property of the plaintiff and defendants, and submitted the joint measurement map of fields bearing Gat No.183 & 185 vide Exh.63 on record.

In the joint measurement map vide Exh.63, the Surveyor found the encroachment of the defendants to the extent of 40 R land over the suit property. The Surveyor of T.I.L.R. office i.e. P.W. NO.3 Satywan Surywanshi has deposed in his cross-examination that he carried out the measurement by using the chain and flag. Merely, the water was lying in the field during the measurement on that count it could not be said that the said measurement was not proper. As the learned lower court has already appointed the Court-Commissioner for the joint measurement of the suit property Gat No.183 & field bearing Gat

No.185, the appointment of Court-Commissioner again for the joint measurement of the said lands does not arise in the present appeal, when the appeal was fixed for the final arguments.

4. It further appears that the appellant/defendant has filed instant application just to prolong the matter, and the application is devoid of legal and sufficient reasons. The ratio laid down in the authority cited supra by the learned Advocate for the appellant is not applicable to the facts & circumstances in the case in hand. In the result, instant application for appointment of Commissioner is liable to be rejected, and I proceed to pass the following order.

### **ORDER**

Application vide Exh. 23 for appointment of Court-Commissioner for joint measurement of the lands is hereby rejected.

Dated : 09.12.2019.  
Latur.

( D. P. Ragit)  
District Judge-4, Latur.