

MHLA090026722020**ORDER BELOW EXH. 5**

1. Present application is filed by plaintiff as per order 26 Rule 9 of Code of Civil Procedure for appointment of D.I.L.R. as Court Commissioner.
2. Perused application and record. No say order is passed against defendants. Heard learned advocate of the plaintiff.
3. It is the contention of plaintiff that, he has filed the present suit for declaration of ownership and recovery of possession in respect of 22 R land out survey no.168/1 situated at village Udgir, Tq.Udgir, Dist.latur. Plaintiff has given the boundaries of suit property in present application. Plaintiff has averred that, suit property is the ancestral property of the plaintiff. Suit property came to possession of the plaintiff in the year 1991 in family partition. Thereafter, name of plaintiff is entered to revenue record of the suit property. Defendants have no right, title or interest in the suit property. In spite of that, they are trying to dispossess the plaintiff from the suit property. On 06/06/2020 defendants encroached on some portion of the suit property by demolishing the common embankment. Therefore, plaintiff filed the complaint before Police Station, Udgir Rural. In spite of that, defendant did not listen the request of the plaintiff and other people. Still act of encroachment of defendants is continued therefore plaintiff has filed the present suit. In present application plaintiff prayed for

appointment of D.I.L.R. as a Court commissioner for the purpose of measurement of the suit property. Hence, the present application.

4. It is settled law in respect of finding out the encroachment that, unless both properties are measured encroachment cannot be find out. Plaintiff has not mentioned in his application to measure both lands of plaintiff and defendants. But, unless and until the land of Balaji Chaudhari and Suman Devkare are measured. Encroachment cannot be find out if any. In that respect there are several judgments of Hon'ble Bombay High for joint measurement of both lands to ascertain the encroachment by opposite party. Considering the boundaries of the suit property towards west side of the suit property there is land of defendant nos.2 and 3 and towards north side there is land of defendant no.1. Hence, considering above aspect unless and until adjacent land of defendants are measured encroachment cannot be found. Therefore, considering the nature of suit i.e. declaration of ownership and recovery of possession measurement through the D.I.L.R. suffice the purpose. Hence, in the interest of justice appointment of court commissioner elucidate the real controversy between the parties. Hence, in the interest of the justice application deserves to be allowed. Hence, I pass the following order.

ORDER

1. Application Exh.5 is allowed.

2. Deputy Superintendent of land Revenue, Udgir is appointed as a Court Commissioner, for the purpose of measurement of suit property i.e. 22 R land, land of Balaji Babaji Choudhari i.e. 1 hector 1 R, land of Suman Pandharinath Davkare admeasuring 52 R out of survey no.168/1 situated at Udgir, Tq. Udgir, Dist. Latur. He is directed to prepare detail map of joint measurement of above lands of plaintiff and defendants and report about encroachment, if any.
 - a. Court Commissioner is directed to measure above lands jointly and report whether there is any encroachment made by plaintiff or defendants.
3. Court Commissioner shall issue notices to the concerned parties before work of commission by mentioning day and date of commission.
4. Court Commissioner shall submit the report of commission along with map as early as possible within two months from today.
5. Plaintiff is directed to deposit the commission fees of entire measurement at concern office and required documents for measurement purpose.
6. Issue commission writ accordingly.

Date:-29/01/2022

(Smt.V.V. Supekar)
2nd Jt. Civil Judge (J.D.), Udgir

CERTIFICATE

“I affirm that, the contents of this P. D. F. file judgment/order are same word for word as per original judgment/order.”

Name of Stenographer: ***L.S.Kendre***

Court Name : ***Smt.V.V.Supekar***

IInd Judicial Magistrate F.C.,Udgir

Date : 29-01-2022.