

ORDER BELOW EXH. 16 IN R.C.S. No. 08/2016
(RAMKISHAN AND OTHERS VS. PRAKASH)

1. This is an application moved by the plaintiffs under O. 26 R. 9 of the Code of Civil Procedure.

2. The present suit is filed for possession of encroached area and mesne profit. It is the contention of plaintiffs that they are owner and possessor of land adm. 1 H 73 R from and out of Gat No. 211 situated at village Bhandarwadi, Tq. Renapur. The defendant is adjacent land holder in Gat No. 209 from eastern side of plaintiffs land. The defendant has encroached upon 12 R land of the plaintiff. Previously the Gat No. 211 was measured by T.I.L.R and some encroachment was found by defendant and other persons. Other persons have handed over the encroached area to plaintiff but the defendant had not handed over the encroached area to plaintiff. Therefore, the joint measurement of lands of plaintiff and defendant i.e. Gat No. 209 and 211 along with its pothissa is necessary by T.I.L.R. Hence, the T.I.L.R Renapur, be appointed as a court commissioner.

3. Per contra, it is the contention of defendant that, the land Gat No. 209 and 211 are separated by canal. As the canal is having lot of water in it is impossible to carryout the measurement of Gat No. 209 and 211. The condition of defendant is poor and he is unable to pay the measurement fess. If the plaintiff is ready to pay the measurement fees then the defendant is also ready for joint measurement of the said Gat No's.

4. Heard the learned advocates for both the parties at length.

5. Having considered rival submissions, it is needless to state that in a suit for removal of encroachment appointment of Court Commissioner in order to ascertain extent of encroachment is essential and in absence of

it, the entire trial will be frustrated. It is trite law that in case of dispute regarding demarcation or encroachment, it is always desirable to appoint court commissioner. The court commissioner can certainly be appointed in order to prepare a map or plan in respect of the suit property in order to assist the court. In the absence of map or plan, in cases of boundary dispute, even if decree is passed, it would be meaningless as it may remain inexecutable in absence of authentic map. Hence, wherein a question of boundary dispute or an encroachment arises it is appropriate that the court should exercise power under O. 26 R. 9 of the C.P.C. Hence, the following order is passed.

ORDER

1. The application is allowed.
2. The T.I.L.R., Renapur is hereby appointed as a Court Commissioner for carrying out the joint measurement of Gat No. 209 and 211 alongwith its pothissa situated at village Bhandarwadi, Tq. Renapur, and fix the boundaries and submit its report within two months.
3. The plaintiff shall pay necessary measurement fees / charges in the concerned office, directly.
4. Issue Commission letter accordingly.

Date 25/04/2019

**Sd/-
(Smt. A. T. Gitte)
Jt. Civil Judge Jr. Division,
Renapur.**