

ORDER BELOW EXH.20

The present suit is instituted for the possession of the suit property. Issues are framed vide Exh. 18. The matter is pending for evidence of plaintiff. On this background, plaintiff filed present application and prayed to appoint the T.I.L.R. Renapur as a Court Commissioner in order measure the land of plaintiff and defendant in Gat no. 74 and 75 of village Motegaon Tq. Renapur Dist. Latur.

2] It is the contented in application that, the plaintiff is owner of 1 H. 39 R. land in gat no. 74 of village Motegaon. But, the defendants by encroaching upon the land of plaintiff have constructed the houses. But, the defendants have stated in their written statement that, they have constructed the houses in land gat no. 75. So, there are totally contrary cases of plaintiff and defendant. So, for conclusive decision of the suit, it is necessary to measure the land gat no. 74 and 75 of village motegaion and fix the boundaries accordingly.

3] The defendants failed to file their say on application. Today also defendants and their learned advocate are absent before Court.

4] Heard learned advocate for plaintiff. Perused the record. It is needless to state that in a suit for removal of encroachment and for boundary disputes appointment of Court Commissioner in order to ascertain extent of encroachment and exact boundaries of the parties is essential and in absence of it, the entire trial will be frustrated. It is strict 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.

5] The present suit also for recovery of encroached land. So, as discussed above in encroachment suit it is necessary to appoint the court commissioner in order to measure the suit land. It shows that, there also boundary dispute between them. Hence, for elucidate the matter in issue there is a necessity to appoint T.I.L.R., as a court commissioner to measure the land of plaintiff and defendants and to fix the boundaries. It is also necessary for T.I.L.R., to show the encroachment in the land property of the parties if any.

6] 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 measurement of Gat No.74 and 75 situated at village Motegaon, Tq. Renapur, Dist. Latur and fix the boundaries of plaintiff and defendants land and submit its report within two months.
3. The T.I.L.R., is hereby directed to show the encroachment if any made by either party.
4. The plaintiff shall pay necessary measurement fees / charges in the concerned office, directly.
5. Issue Commission letter accordingly.

Date 02/09/2021

sd
(S. D. Yadav)
Jt. Civil Judge Jr. Division,
Renapur.

(4)

C E R T I F I C A T E

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

Name of Stenographer	: Shankar M. Tanawade
Court Name	: S. D. Yadav, Jt.C.J.J.D., Renapur.
Order Date	: 02/09/2021
Order signed by presiding officer on	: 02/09/2021
Order uploaded on	: 02/09/2021