

Sanjay s/o. Ravsaheb Birajdar and other - Plaintiff

VERSUS

Panchappa Babu Birajdar and other - Defendants

ORDER BELOW EXH.29 IN RCS NO.128/2017

This an application filed by plaintiffs for appointment of a T.I.L.R. as a Court Commissioner under Order 26 Rule 9 of the Code of Civil Procedure. Defendants have filed their say at Exh.35. Heard the learned Advocate for both sides.

2] Plaintiffs contended that defendants No.1 to 3 have committed an encroachment to the extent of 1H 20R in suit properties. Plaintiffs requested defendants to carry out measurement of their respective lands. However, defendants denied the same. Therefore, plaintiffs contended that if suit properties have been measured through T.I.L.R. then, disputes between plaintiffs and defendants can be finally settled. Therefore, plaintiffs prayed for appointment of T.I.L.R. and to fix boundaries of suit properties.

3] Defendants contended that plaintiffs have filed similar measurement application in February, 2017. Plaintiffs did not mentioned that when defendants have committed an encroachment in suit properties. It shows that there is no encroachment in suit properties as alleged by plaintiffs. Accordingly, defendants prayed for rejection of the application.

4] Plaintiffs have filed present suit for declaration, perpetual injunction and for removal of encroachment. Perusal of the plaint shows that plaintiffs have averred that defendants have committed an encroachment in suit properties. Though plaintiffs did not mention as to when defendants have committed an encroachment in suit properties then also it does not mean that defendants might not have committed any encroachment in suit properties as alleged by plaintiffs. It is well settled legal position that boundary disputes can be best adjudicated by way of an appointment of T.I.L.R. In the present suit also the dispute is regarding the boundaries and alleged encroachment which in my opinion can be best adjudicated if T.I.L.R. is appointed as a Court Commissioner to carry out the measurement of the suit property. It will facilitate the court to ascertain whether defendants have committed any encroachment as alleged by plaintiffs or not. Moreover, appointment of T.I.L.R. will help the court to finally decide the suit on merit. Hence, I pass the following order :

ORDER

- (i) The application is allowed.
- (ii) The T.I.L.R. AUSA, is hereby appointed as a Court Commissioner to measure southern side 64R land of plaintiff No.1, adjoining northern side 1H 61R land of plaintiff No.2 and adjoining northern side 2H 35R land of plaintiff No.3 in Survey No.23 situated at Yelloriwadi, Tq. AUSA and to fix boundaries of the same and to file his report as to whether there is any encroachment.
- (iii) Plaintiffs are directed to bear the expenses of the Court Commissioner.

- (iv) The Court Commissioner is directed to carry out measurement after issuing notices to parties and preferably in presence of the parties and to file his report within one month from that date of receipt of the commission writ.
- (v) Issue commission writ accordingly to the T.I.L.R., Ausa.

Place : Ausa.
Date : 18/04/2018

(R. D. Gaikwad)
Jt. Civil Judge J.D., Ausa.