



ORDER BELOW EXH. 18

The present application is filed by the plaintiff for appointment of TILR AUSA for joint measurement and fixation of boundaries of the property mentioned in paragraph No. 1 of the application.

2. The Ld. Advocate for the plaintiff has contended that the plaintiff is the owner and in possession of the suit property mentioned in paragraph 1 of the application. The plaintiff has further contended that, the defendant has encroached upon the land of plaintiff. They have destroyed the band. They encroached upon the land of plaintiff. When plaintiff enquired with TILR office for joint measurement, the said authority convened the plaintiff to obtain consent from adjoining holders. Hence plaintiff has filed present application for appointment of TILR and measurement of his land more specifically described in paragraph No. 2 of the application.

3. The defendants have failed to file say. Hence application proceeded without their say.

4. Read the application. Perused the record. Heard the Ld. Advocates for the parties.

5. The plaintiff has filed on record 7/12 extract of S. No. 73 of village Talni. On perusal of the same, it appears that the plaintiffs name are mutated.

6. The suit is for recovery of possession. There is an averment to the effect that the defendants are trying to destroy common bandh. The defendants are admittedly adjacent land

holders of the plaintiff's land.

7. Order XXVI Rule 9 of the CPC provides that in any suit in which the court deems a local investigation to be requisite or property for the purpose of elucidating any matter in dispute the court may issue commission to such person as it thinks fit.

8. From the contentions of the plaintiff it appears that the defendants are adjacent land holders of the suit property and real dispute between the parties is regarding boundaries. It is settled position of law that, in order to ascertain the boundaries and to resolve boundaries disputes, the best evidence would be measurement of land by an expert witness. The T.I.L.R. is an independent agency and measurement carried on by such agency would not cause prejudice to any of the parties. The defendants would be at liberty to cross-examine the report of the TILR. Hence no prejudice will be caused to the defendants. Thus, 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 joint measure the lands of plaintiffs and defendants in S No. 73 situated at village Talni, Tq. AUSA, more specifically described in paragraph No. 1 of the application to furnish the measurement map alongwith his report.
- (iii) The plaintiffs are directed to bear the expenses of Court Commissioner.
- (iv) The plaintiff to supply the requisite documents to the Court Commissioner.

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

Place: Ausa
Date: 21/01/2022

(P.R. Kulkarni)
Civil Judge, J. D.,
Ausa.