

Order Below Exh. 21 in RCS No. 416-2018

This is an application filed by plaintiffs under Order XXVI Rule 9 of the Code of Civil Procedure to appoint T.I.L.R, AUSA for the measurement and fixation of boundaries of the suit property more specifically described in paragraph (2) of the application.

2. The plaintiffs have contended that she is the owner and in possession of land in Gat No. 8/D situated at village Vadaji, Tal. AUSA. The plaintiff no.1 has purchased 1H03R land and plaintiff no.2 has purchased 46R land of the west side in the said gat no. The plaintiffs are members of joint family and cultivating the suit property jointly. There is a south north bandh on the on the western side and east west bandh on the on southern side and east west bandh on northern side are intact.

There is nalah(नाला) on the east side of the suit property. There is a dispute between adjacent land holders of the plaintiffs. The plaintiffs have requested the adjacent land holders for the measurement and fixation of the boundaries of Gat no.8/D. However, the defendants did not pay heed to it. The plaintiffs have further contended that appointment of court commissioner i.e. TILR is necessary to ascertain the encroached portion and the boundaries of the suit property. The measurement by T.I.L.R. could finally resolve the dispute between the parties. The plaintiffs are ready to deposit the requisite fees. Hence the plaintiffs have prayed that the application be allowed.

3. The suit has proceeded ex parte against defendants no. 1,3,5 to 8. The suit has proceeded without written statement of defendants no. 2 and 4. Despite several opportunities granted to the defendants, they have failed to file their say to the present application. Hence present application has proceeded without the say of the defendants.

4. Read the application, perused the record, Heard Ld. Advocate Shri. V. M. Wagdare for the plaintiffs. None present for the

defendants.

5. The suit is for measurement and fixation of boundaries as well as for perpetual injunction. The plaintiffs have averred that there is dispute regarding area of the land holders in S.N. 8/D. The plaintiffs have filed on record 7/12 extract of the suit property. On perusal of the same it appears that the name of the plaintiffs is entered in 7/12 extract of the suit property. The plaintiffs have specifically pleaded that there is a dispute between the parties as to the area. The defendants are adjacent land holders of the land of the plaintiffs. Therefore, in such circumstances the local investigation appears necessary. Further, the defendants have not resisted the application.

5. O.XXVI R.9 specifically provides that in any suit in which the court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute the court may issue commission to such person as it thinks fit. It is also 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. 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 measure and fix the boundaries of 1 H 49 R land in Gat No. 8/D, out of the total admeasuring area 5 H 53 R, situated at village wadaji, Tal. Ausa, more specifically described in paragraph (2) of the application, to furnish the measurement

map specifically showing encroachment noticed, if any, along with his report.

(iii) The plaintiffs are directed to bear the expenses of Court Commissioner.

(iv) The plaintiffs to supply the requisite documents to the Court Commissioner.

(v) The plaintiffs are directed to deposit requisite court commissioner fees.

(vi) The Court Commissioner is directed to carry out measurement after issuing notices to both parties and preferably in presence of both the parties and to file his report within three months from the date of receipt of the commission writ.

(vii) Issue commission writ accordingly to the T.I.L.R., Ausa.

Place: Ausa

(P.R. Kulkarni)

Date: 25/09/19

2nd Jt. Civil Judge, Junior Division,

Ausa