

ORDER BELOW EXH.19 IN R.C.S.NO. 233/2014
(Sanjay vs. Shalini and others)

This is an application filed by the plaintiff under Order 26 Rule 9 of the Code of Civil Procedure. The plaintiff submit that, he is owner of 1 acre 14 R land in survey No.1 situated at Killari, Tq. Ausa. Defendant No.1 and 2 have encroached upon his land from western side. The defendants have encroached on the land of plaintiff by destroying the common bandh from southern side. Defendant No.1 and 2 have their land in survey No.249/5. Land of defendant No.3 is to the west of plaintiff's land and land of defendant No.4 is to the south of plaintiff's land. The plaintiff has got measured his land privately. In spite of application filed by the plaintiff with T.I.L.R. office, they have not measured land of the plaintiff. After the measurement, the dispute between the parties will be settled. Even defendant No.1 and 2 have contended in their W.S. that, the dispute cannot be resolved without the measurement of old survey number. Therefore, the plaintiff prayed that, his land in survey No.1 shall be measured through T.I.L.R.

2. The defendants resisted the application by filing say at Exh.22 and denied that plaintiff is owner of 1 acre 14 R land of survey No.1. They also denied the fact of measurement as pleaded by the plaintiff. The defendants submit that, to the south of their land, there is a survey number bandh and thereafter there is a 10 to 15 feet channel for the flow of rain water. To the south of that channel, there is a bandh and thereafter there is land of the plaintiff. The plaintiff has not made party to the other persons who

hold land in survey No.1. The plaintiff has destroyed the northern side bandh and cultivated the area covered by channel. The defendants have filed photographs and map along with their W.S. Without proceeding with the application below Exh.5, the plaintiff has filed this false application. Therefore, the defendants prayed for rejection of the same.

3. Heard both sides, perused record of the case. The plaintiff has approached the Court with specific case that defendant No.3 and 4 encroached on his land to the extent of 7 R and 3 R respectively. On perusal of 7/12 extract of survey No.1 it can be gathered that, there are other land holders in this survey number. The plaintiff has specifically submitted that, land of defendant No.1 and 2 is in survey No.249/5. In order to ascertain the area of encroachment, it is necessary to have a present situation on the field. In that regard, there are certain photographs on record, however, those are not helpful to ascertain whether there is any encroachment. The suit is in respect of removal of encroachment and possession of the encroached land. The pleadings on record shows that, both the parties i.e. the plaintiff and defendant No.1 and 2 are blaming each other for the destruction of bandh of survey number. Those pleadings clearly shows that, there is dispute between the parties regarding the boundaries of their respective lands. In such circumstances, it is desirable to appoint the cadastral surveyor to measure the land of the plaintiff. For that, the plaintiff shall deposit the measurement charges of entire survey No.1 so as to ascertain the encroachment. Hence, in the light of above discussion, I pass the following order.

ORDER

1. The T.I.L.R. AUSA is hereby appointed as Court Commissioner to measure the land in survey No.1 situated at Killari, Tq. AUSA.
2. He shall measure the land in survey No.1 after depositing necessary charges by the plaintiff within one month from the date of this order.
3. The T.I.L.R. AUSA shall measure entire survey No.1.
4. He shall also measure the area covered by the survey number bandh of survey No.1.
5. He shall also show the encroachment and details thereof if any.
6. He shall submit detail report about the measurement within two months after depositing charges by the plaintiff.
7. Issue commission writ accordingly.

Date : 25/08/2015

(R. S. Kanade)
Jt. Civil Judge J.D. AUSA.