

R.C.S. No. 412/2021

Shrihari Vs. Bandu + 2

ORDER BELOW EXH. 06

(CNR No.MHLA140013642021)

By this application the plaintiff prayed to appoint T.I.L.R., AUSA for measurement of the suit properties and to fix the boundaries.

2. Plaintiff submitted that he is owner of the suit property as mentioned in para no. 1 of the plaint situated at Nagarsoga, Tahsil AUSA Dist. Latur. The defendants are adjacent land holder of the suit property. The defendants have encroached upon his land. Therefore, He prayed for appointment of T.I.L.R., AUSA for measurement of land in his possession. The defendant no. 1 and 3 by filing say strongly objected this application. They submitted that pleading of plaintiff about encroachment is vague and imaginary and this application is not maintainable.

3. Perused the contents of application and say filed thereon by defendant no.1 and 3. The suit is proceeded Ex-parte against defendant no. 2. Heard Learned advocate Shri.A. G. Kulkarni for the plaintiff, learned advocate Shri. U. B. Patil for the defendant no. 1 and learned advocate Shri. A. A. Fattepurkar for the defendant no. 3. It is to be noted that, there is an averment in the pleading of the plaintiff that defendants have encroached upon his land. There is no dispute that parties to the suit are adjacent land holders.

4. Order XXVI Rule 9 of the C.P.C., 1908 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.”

5. Thus taking into consideration the legal provision a Court commissioner may be appointed for elucidating matter in dispute. It is settled position of law that, in order to ascertain encroachment, 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. In such circumstances It would be just and appropriate to measure the land of plaintiff and defendants jointly by TILR for just decision of the matter. Hence, I proceed to 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 the

1) Survey No.155 admeasuring area 08.73 H.R. whole and adjacent land of the defendants situated at Nagarsoga, Tah. AUSA, Dist. Latur;

2) Survey No.84 admeasuring area 0.89 H.R. and adjacent land of the defendants situated at Nagarsoga, Tah. AUSA, Dist. Latur; and

3) Survey No.77/10 admeasuring area 0.48 H.R. and adjacent land of the defendants situated at Nagarsoga, Tah. Ausa, Dist. Latur and to furnish the measurement map showing encroachment noticed if any, along with his report.

- (iii) The plaintiff is directed to bear the expenses of Court Commissioner.
- (iv) The plaintiff to supply the requisite documents to the Court Commissioner.
- (v) The plaintiff is 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
Date: 09/12/2022

(Nitesh B. Rathod)
2nd Jt.Civil Judge, J. D., Ausa