

ORDER BELOW EXH.NO.21 IN**R.C.S.NO.551/2015**

This an application filed by the plaintiff for appointment of a T.I.L.R. as a Court Commissioner under Order 26 Rule 9 of the Code of Civil Procedure. In spite of sufficient opportunities being given defendants have failed to file their say. Heard the learned Advocate Shri. U. B. Patil for the plaintiff.

2] The plaintiff has contended that defendants have committed an encroachment in the suit property. the plaintiff had carried out measurement of the suit property in the year 2008, however, record of the measurement has been lost. Therefore, if the the plaintiff's landed property and defendant's landed property are measured then disputes between the plaintiff and defendant can be settled finally. Accordingly, the plaintiff prayed for joint measurement of the plaintiff's and defendant's landed properties through T.I.L.R and to show encroachment committed by the defendant.

3] Perusal of the plaint (Exh.1) shows that the plaintiff has expressly contended that the defendant has committed an encroachment in eastern side and west-south corner of the suit property. In the contention of the plaintiff that the defendant no.1 has committed an encroachment of 19R and defendant no.2 has committed an encroachment of 6R in the suit property. The plaintiff has prayed for removal of an alleged encroachment committed by defendants and for possession of the encroached area. 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 and defendant's landed property. It will facilitate the court to ascertain whether the defendants have committed any encroachment as alleged by the plaintiff 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 D.I.L.R. Ausa, is hereby appointed as a Court Commissioner to measure 33R landed property of the plaintiff in Survey No. 378/4 and 1H 44R landed property of defendant no.1 Survey No. 380 and 20R landed property of defendant no.2 in Survey no.378/A/1 and to file his report as to whether there is any encroachment.
- (iii) The plaintiff is 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 : 22/11/2017

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