

R.C.S. No. 697/2022

Manoj +2 Vs. Baburao +3

ORDER BELOW EXH. 20

(CNR No.MHLA140016662022)

By this application the plaintiffs prayed to appointment of TILR AUSA for measurement of the property and to fix the boundaries and for other relief. Perused the application and say filed thereon. Heard both.

2. Plaintiffs submitted that they are owner of the suit properties as mentioned in para no.2 in the plaint situated at AUSA, Tq. AUSA, Dist. Latur. The defendants are adjacent land holder of the suit property. The defendants have encroached upon their land. Therefore, they prayed to appointment of TILR AUSA for measurement of land in their possession and the land of defendants. Defendants filed their say and prayed to pass appropriate order.

3. Read the application. Perused the record. Heard learned advocate for both side. It is to be noted that, there is an averment in the pleading of the plaintiffs that there is boundary dispute and defendants have encroached upon their land. There is no dispute that parties to the suit are adjacent land holders.

4. Order XXVI Rule 9 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.

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 on merit. In such circumstances It would be just and appropriate to measure the land of plaintiffs 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 Gut No. **99/A whole** including the land of the plaintiffs ad-measuring 4 H. 22 R. (as per mentioned in the application) situated at Ujani, Tq. AUSA, Dist. Latur and to furnish the measurement map 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
Date: 09/05/2024

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