

ORDER BELOW EXH. 06 IN R.C.S. NO. 934/2024
Ushabai Vs. Dilip and others
CNR No.MHLA140029482024

The present application is filed by plaintiff for appointment of T.I.L.R. AUSA for measurement and fixation of boundaries of the land bearing O H. 77 R. belongs to plaintiff.

2. The learned advocate for the plaintiff has contended that plaintiff is owner of the suit property situated at village Chincholi (Ka.), Tq. AUSA. The defendants are adjacent land holders of the suit property. It is alleged that, the defendants are encroaching the land of plaintiff i.e. the suit property. Therefore, plaintiff requested for measurement and fixation of boundaries of above mentioned property through T.I.L.R. AUSA. However, the defendants denied the same. Therefore, plaintiffs have pressed instant application and prayed for appointment of T.I.L.R. AUSA for inspection and measurement of suit property belongs to plaintiff.

3. The say of defendants is called on application. The defendants have not filed their say. Hence, application is proceeded without say of defendants on giving reasonable and sufficient opportunity.

4. Perused the application and the record. Heard. The present suit is for removal of encroachment. Defendants failed to file their say. Thus, in sum and substance it appears

that the plaintiff and defendants are adjacent holders of the land and dispute between them pertains to boundary.

5. 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.

6. 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 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. In such circumstances, it would be just and appropriate that, the measurement of land of plaintiff is carried out by independent agency. Hence, I proceed to pass the following order;

ORDER

- (i) The application is partly allowed.
- (ii) The T.I.L.R. AUSA is hereby appointed as a Court Commissioner to measure the land

bearing 0 H. 77 R. out of Gat no. 294 belongs to plaintiff (as mentioned in para-1 of the present application) situated at Chincholi (Ka.) 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: 15/04/2025

(Shri. Awate P. P.)
Jt. Civil Judge, J. D., Ausa.