

:: Order below Exh. 16 ::

01. This is an application by the plaintiffs under Order-XXVI Rule-9 of the Code of Civil Procedure for appointment of T.I.L.R. for measurement of suit property i.e. survey No. 38/1 to find out encroachment made by the defendant and further to fix the boundaries of the plaintiff's land. Application is opposed by the defendant by filing say at Exh. 21. As per the defendant, there is no material to show that, the defendant has encroached upon the plaintiff's land. The entire information is made on assumption. Hence, prayed to reject the application.

02. The suit is filed for recovery of encroached area. As per the plaintiffs, they are owners in respect of survey No. 38/1 situated at village, Deoni (Khu.). The defendant had encroached from Western side to the extent of 01 H. 07 R.. The defendant denied about making encroachment in plaintiffs' land. Therefore, the fact of encroachment can not be proved by oral evidence of parties. In order to find out encroachment, local investigation is necessary by measurement of lands. Therefore, T.I.L.R. being authorized person for measurement, he is required to be appointed as Court Commissioner. However, in order to find out accurate encroachment made by the defendant, it would be necessary to carry out measurement of entire survey No. 38 and its sub-divisions, so that the actual area of each sub-division will be determined and encroachment if any made in the plaintiffs' land will be brought on record. Hence application needs to be allowed. Accordingly, following order is passed.:

:: Order ::

- 1) Application is allowed.
- 2) T.I.L.R., Deoni is appointed as Court Commissioner for measurement of survey No. 38 and its sub-division of village, Deoni (Khu.) Tq. Deoni.
- 3) T.I.L.R. is directed to carry out measurement of entire survey No. 38 and its sub-divisions of village, Deoni (Khu.) by issuing notices to all parties and show area of each sub-divisions and encroachment, if any made by the defendant in plaintiffs' sub-division No. 38/1.
- 4) **The encroachment portion shall be assessed from the fixed boundary marks of survey number and not on the basis of actual usage of the parties.**
- 5) T.I.L.R. is further directed to fix boundaries of the plaintiffs' land.
- 6) T.I.L.R. is directed to submit report along with map. Returnable on 19-09-2018.
- 7) The cost of measurement be borne by the plaintiffs.
- 8) Issue commission writ accordingly.

Sd/-

(U. B. Kalapagar)

Civil Judge Junior Division,

Deoni.

Date : 19-07-2018.

I affirm that the contents of the P.D.F. file order are same, word to word, as per the original order.

Name of the Stenographer	M.Y. Wadiwale.
Name of the Court	Shri.U.B.Kalapagar, Civil Judge Jr. Division, Deoni.

Reg. Civil Suit No. 72/2016.
CNR No.:MHLA160009992015

Date of Dictation	19/07/2018
Order signed by the P.O. on	19/07/2018
Order uploaded on	20/07/2018