

**ORDER BELOW EXH-19**

(Date 30.08.2024)

The plaintiff has filed present application under Order XXVI Rule 9 of the Code of Civil Procedure for appointment of Court Commissioner.

02. **The plaintiff's claim in the present application is as under :-**

The plaintiff before by appointing T.I.L.R. has got measured the suit land by this Court but T.I.L.R. has not shown encroachment over the suit land in his measurement map though was directed by Court on finding of encroachment, if any. The said map only reflects the area found in possession of the plaintiff i.e. 01 H. 59 R. It is claim of the plaintiff that he is owner of are admeasuring 01 H. 40 R. in Gut No.28. Therefore, it was required to file the present application for reflecting encroachment caused by the defendant.

03. The defendants replied by objecting the present application.

04. Gone through the application and say filed. Even perused the plaint and the earlier order passed below Exh-14 regarding directions issued before to the T.I.L.R. Heard both learned Advocates at length.

05. The following points arise for consideration, the Court has recorded its findings and reasons as under :

<u>No.</u>	<u>POINTS</u>	<u>FINDINGS</u>
01.	Whether the applicant is entitled for appointment of the Court Commissioner as prayed ?	In Affirmative
02.	What order ?	As per final Order

REASONS

AS TO POINT No.01 :

06. The main suit is filed for declaration of ownership, possession, mandatory and perpetual injunction. By filing present application the plaintiff is seeking permission to get measure the suit land in context that plaintiff is owner of 01 H. 40 R. in Gut No.28 but the previous Court Commissioner's report though discloses that only 01 H. 15 R. land is found in possession of the plaintiff, but, there is no reference of encroachment caused over the suit land in the map drawn by the Court Commissioner. The Court has minutely gone through the said map. The Court has even perused the earlier directions issued to the T.I.L.R. below Exh-14. The same goes to show that T.I.L.R. was specifically directed to measure 01 H. 40 R. land in Gut No.28 belonging to the plaintiff and put its marking and even to demark the encroachment if found at the spot and prepare the map accordingly. But, the map does not disclose if there is encroachment or not at the spot. The suit being that of removal of encroachment, the appointment of the T.I.L.R. cannot be deemed to be for the purpose of collecting evidence. Therefore, the Court finds that it was essential for the T.I.L.R. to follow the directions issued below Exh-14. In result, as the T.I.L.R. has not promptly acted upon, it would be proper to re-issue such directions. Hence, the order :

ORDER

01. The application is allowed. The T.I.L.R. Biloli is appointed as Court Commissioner.
02. T.I.L.R., Biloli is directed to carry out the measurement of land Gut No.28 of village Karla (Bk), Tq.Biloli, Dist. Nanded, and submit its report at the earliest.
03. The T.I.L.R., Biloli is specifically directed to admeasure 01 H. 40 R. land owned by the plaintiff and if found encroachment upon such area, specify them clearly in the report and the map.
04. The applicant to deposit necessary commission fee with the T.I.L.R. office, Biloli.

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05. Applicant has to supply copy of the plaint/ application, previous map and all other relevant documents to the Commissioner.
06. The writ of commission be issued accordingly.

Date : 30. 08. 2024.

(A.A.K. Shaikh)
Civil Judge Sr. Division,
Biloli.

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CERTIFICATE

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

Name of the Stenographer : Syed Iftekharuddin Syed Arifuddin

Court Name : Court of Civil Judge S.D. Biloli

Date : 30. 08. 2024

Judgment signed by the Presiding Officer on : 30. 08. 2024

Judgment/Order uploaded on : 30.08.2024