

ORDER BELOW EXH. 08 IN R. C. S. NO. 76/16.

1. An application filed by plaintiff Under Order 26 Rule 9 of Civil Procedure Code, 1908, for the appointment of T. I. L. R., as a Court Commissioner.

2. Plaintiffs have filed this application for appointment of T. I. L. R. Chandwad, as a court commissioner for measurement of suit property Gut No. 213, situated at Pimpalgaon (Dha) Tal. Chandwad Dist. Nashik and submit report by showing boundary marks along with measurement map. Defendants have denied all the contentions made in the application and defendant No.1, raised objections that, he has measured his Gut No. 212 vide M. R. No. 1793/12 and thereafter, for removal of encroachment he filed RTS/AATIKRAMAN/178/2013. But, even after sufficient opportunity plaintiffs have remained absent in the proceeding. Therefore, considering evidence on record revenue authority finally directed to the plaintiffs on 31/07/2015, to vacant encroached portion. As per said order he got possession of 11 R, encroached portion from the plaintiffs. Plaintiffs have not taken any steps against that order till yet and thereafter without any cause of action, they filed this suit and application. Therefore, application be rejected.

3. It is the bounden duty of the plaintiff to prove his case on his own footing and not with the help of court. It is also well settled law that, the Court Commissioner cannot be appointed for the collecting of evidence. But, as per the rule 9 of the Order 26 of the C. P. C., the Court deems to local investigation to the requisite or proper for the purpose of elucidating any matter in dispute. The Court may issue a commission to such persons as it things fit. After considering application, say thereon and arguments of the rival parties at length. It appears that, dispute between parties regarding encroachment of Gut Nos. 212 & 213 on each others' portion and therefore as per my view for avoiding multiplicity of the litigations and full stop to further litigations joint measurement of suit property Gut Nos. 212 & 213, situated at Pimpalgaon (Dha) Tal. Chandwad Dist. Nasik, is required for final decision of this suit or finality of their dispute. Though the plaintiffs have prayed measurement of his own Gut No. 213, only. Hence, hereby following order is just and proper in the interest of justice.

O r d e r.

1. Application Exh. 08 is hereby allowed.
2. T. I. L. R., Chandwad is hereby appointed as a Court Commissioner and directed to visit the spot and measured jointly Gut Nos. 212 & 213, situated at Pimpalgaon (Dha) Tal. Chandwad Dist. Nasik. Prepared map indicating exact position and boundary marks of both the Gut numbers as per the record of 7/12 extract and submit exact position report along with the map.
3. It is further directed to prepare the map after verification, by giving prior notices to the parties on or before 28.09.2017.
4. Applicant is hereby directed to deposit Court Commission fees to the Concern office within 15 days from today.
5. If he failed to deposit measurement fees within stipulated period the application and prayer made therein treated as rejected without any specific order of rejection.
6. Issue writ of Commission as per the provisions of law.

Sd/-

(S.S.Dhapate)

Jt .Civil Judge, Jr. Division,
Chandwad.

Date: 10.07.2017.