

MHOS100001052017**Reg.Civil Suit No.60/2017****(CNR No.MHOS100001052017)****Order below Exh.54**

01. The plaintiff has filed this application for appointment of T.I.L.R. as Court Commissioner as per Order XXVI Rule 9 of the Code of Civil Procedure.

02. The Ld. Counsel for the plaintiff submitted that, the suit is filed for declaration and injunction in respect of the suit property. Plaintiff has filed application for temporary injunction, after hearing both the sides, the said application was allowed by order dated 23/01/2020. Defendants have not filed any appeal against the said order. However, defendants have causing obstruction to the plaintiff. Defendant raised question of the measurement of land. Plaintiff on various occasions requested to all defendants for joint measurement but they simply overlooked. Plaintiff is ready to deposit necessary charges of measurement of land block No. 315/E ademeasuring area 01 H. 71 R. situated at Village Kadaknathwadi, Tq. Washi. Dist. Osmanabad.

03. He further submitted that, defendants very well acquainted with the mandate passed by the Court, inspite of the said fact they use to create obstruction. This act of defendants certainly violated the mandate. On 12th December 2021 when the plaintiff was busy in day to day agricultural activities in suit land again defendants illegally entered in suit land and created impediment. At that time plaintiff shown certified copy of the order passed below Exh. 5 and 07/12 extract but they simply thrown away the said documents and raised questions of

the measurement for that also plaintiff shown his readiness & willingness but thereafter defendants refused to do so by saying that, “it's your problem you have to resolve it be depositing required charges of measurement in the Court”. He further stated that, he is ready to deposit necessary charges of measurement of land Block No. 315/E admeasuring area 01 H. 71 R. situated at Village Kadaknathwadi, Tal. Washi. Hence he prayed to appoint T.I.L.R. Washi as Court Commissioner.

04. The defendants have filed their say and denied the contentions made in the application. They submitted that, present application is filed against the settle provisions of law and reasons mentioned in application are totally false and baseless. They further submitted that, suit of plaintiff is not for encroachment. Therefore, question does not arise for measurement. The present suit is filed for declaration of title and injunction. Hence, it is bounded duty of plaintiff to prove his title and possession over suit property. Plaintiff can not collect the evidence from Hon'ble Court. Hence, the Ld. Counsel for defendant prayed to reject the application with heavy costs.

05. Read application and say. Heard arguments of advocates of both the sides at length. Perused the record.

06. As per Order 26 Rule 9 of the Code of Civil Procedure, Court can appoint Court Commissioner for making local investigation if Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute. In the present matter, the plaintiffs came with the specific contentions that, defendants have denied the title and possession of the plaintiff over the suit property. It is pertinent to note here that, defendants came with the case that, for cultivating the lands properly the predecessor of plaintiff and defendants had exchanged the agricultural land to each other and

therefore, the suit property was given to them by the predecessor of plaintiff. However, there is no prima facie documents produced on record in support of their contentions. It is pertinent to note here that, to resolve the real controversy between the parties it is necessary to brought on record the actual conditions of the suit properties. Further, whether defendants have encroached or obstruction upon the suit property or not, this can only be decided after expert evidence of the Court Commissioner. Therefore it is necessary to appoint Court Commissioner for local investigation as to the actual position prevailing on the disputed suit property.

07. The suit is for declaration and injunction and therefore it is essential that the disputed property i.e. land Block No. 315/E admeasuring area 01 H. 71 R situated at village Kadaknathwadi, Tal. Washi, Dist. Osmanabad must be measured by appointing the Court Commissioner. Further, it appears that, it is necessary to measure the suit property, because it is of such nature that, it cannot be proved by 'mere ocular evidence' and significance of oath and affidavit of witnesses appears to be of lesser value. The documents and affidavits on record had created a disputed picture and this Court would need a virtual report. Further the controversy is of such nature that, if not disputed or disproved, the report of Commissioner can help to elucidate the fact of the matter in dispute. Thus, with the above observation made, I proceed to pass the following order in the interest of justice.

ORDER

- 1) The application at **Exh.54** is hereby allowed.
- 2) T.I.L.R., Tal. Washi is hereby appointed as the Court Commissioner. He is directed to visit and measure the suit property i.e. 315/E admeasuring aera 01 H. 71 R. situated at village Kadaknathwadi, Tal. Washi, Dist.

Osmanabad.

- 3) The T.I.L.R., Washi is hereby directed to submit his measurement report alongwith map within one month from the date of knowledge of this order.
- 4) The T.I.L.R., Washi shall also show the exact precise and concise area under encroachment if any.
- 5) The plaintiff is hereby directed to pay the requisite fees as per rules directed in the T.I.L.R. office, Washi.
- 6) Both parties are hereby directed to provide necessary documents, copies of plaint and written statement to Commissioner and to provide necessary assistance to him at the time of commission work.
- 7) Issue Commission Writ accordingly to the Court Commissioner.

(J. S. Gaikwad)

Date : 06/01/2023

Civil Judge Junior Division,
Washi.

CERTIFICATE

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

Name of Stenographer	---	A.A. Joshi, Stenographer, (Grade-III)
Court	---	Civil Court, Washi, Tal. Washi, Dist. Osmanabad
Date	---	06-01-2023
Order signed by the presiding officer on	---	06-01-2023
Order uploaded on	---	06-01-2023

