

MHPA110005172022**ORDER BELOW EXH.23.**

The plaintiff has filed present application seeking the appointment of T.I.L.R. as a court commissioner for measurement of Survey No.153, situated at village Masnerwadi, Tq. Gangakhed, Dist. Parbhani.

2. It is the case of plaintiff that she is the owner of Survey No.153 to the extent of 40 R. The defendant nos.1 to 4 have encroached around the suit property to the extent of 10 R. Since plaintiff is a lady, the defendants are scratching the common boundary and intends to disposses the plaintiff. Therefore, in order to ascertain the encroached portion she prayed for measurement of suit Survey No.153.

3. The defendants objected the application contending that the application is not tenable. The plaintiff intends to collect the evidence under the guise of said order. The trial is yet to commence. Hence, prayed to reject the application.

4. Perused the record. Heard the Ld. Advocate for both the parties. The plaintiff has filed present suit for declaration of ownership and recovery of encroached portion. She has alleged the defendants having encroached around the suit property to the extent of 10 R land. The Ld. Advocate for defendants relied upon the judgment of Hon'ble Parent High Court, reported in 2001 Bombay Cr. 800 in **Sanjay Namdeo Khandare Vs. Sahebrao Kachru Khandare**, wherein, the Hon'ble Court set aside the order of trial Court appointing the Court Commissioner observing that Court Commissioner cannot be appointed for collecting the evidence. I perused the judgment cited. In

the said case the C.J.J.D., Mahagao, Dist. Yeotmal had appointed Court Commissioner directing to submit report regarding actual possession of the suit field. However, in the case in hand, the actual alleged encroachment is to be ascertained. Therefore, with due respect, I found the judgment cited not applicable to the case in hand. Moreover, time and again the Hon'ble Apex Court held that in case of boundary disputes and encroachment issues the measurement at the instance of an expert is warranted.

5. Significantly, the plaintiff is seeking the measurement of entire Survey No.153. Therefore, the measurement at the instance of T.I.L.R. may be helpful to ascertain the alleged encroachment and to resolve the dispute between the parties. Hence, I pass the following order.

ORDER

1. Application is allowed.
2. T.I.L.R., Gangakhed is hereby appointed as a Court Commissioner.
3. The T.I.L.R., Gangakhed is directed to carry out the measurement of Survey No.153, situated at village Masnerwadi, Tq. Gangakhed, Dist. Parbhani.
4. The T.I.L.R., Gangakhed is further directed to submit the clear report as to any encroachment on suit property.
5. The plaintiff is directed to deposit the requisite fees at the office of T.I.L.R., Gangakhed, and file its receipt on record.
6. The T.I.L.R., Gangakhed shall submit the report within three months from the date of deposit of requisite fees by the plaintiff.
7. The T.I.L.R., Gangakhed shall ensure the presence of both the sides for measurement by advance notice.
8. Accordingly, writ be issued.

Date:- 04.04.2025

(A.R. Sayed),
Civil Judge, Senior Division,
Gangakhed.