

ORDER BELOW EXH. 127

This is an application moved by the plaintiff for appointment of Commissioner by virtue of Order XXVI Rule 9 of Code of Civil Procedure. The plaintiff contended that, defendants made encroachment over suit property by illegally constructing shop. Therefore, in order to ascertain actual encroachment, it is necessary to measure the suit property. If, suit property will be measured through TILR then disputes between plaintiff and defendants will come to an end. Thus plaintiff prayed to allow the application. Defendants have filed their say and strongly objected to the application. Learned advocate for defendant strongly objected to the application for the reasons mentioned in their say at Exh. No.129. Defendants prayed to reject the application.

02) The following points arise for my determination. I have recorded my findings against each of them for the reasons as follows.

Sr. No.	Points	Finding
1.	Whether appointment of Court Commissioner is essential for the purpose of elucidating matter in dispute ?	Yes.
2.	What order?	Application is allowed.

REASONS

As to point No.1:

03) I gone through record and proceeding of case. The present suit is filed by plaintiff for removal of encroachment against defendants. The plaintiff stated that defendants have made encroachment over suit property from north-western side to the extent of 25 sq.ft. . The defendants denied the alleged encroachment. Thus, in order to

ascertain the encroachment, measurement of entire Gaonthan No.2/6 seems to be necessary. Therefore, record shows in present suit if Gaonthan No.2/6 get measure through T.I.L.R. Shriwardhan then disputes between the parties can be resolved finally. If, Court Commissioner is appointed, then it definitely help the Court to come at proper conclusion. It also helps elucidating the matter in controversy.

04) In present suit, the Court vide order below Exh. No.25 appointed TILR Shriwardhan as a Court Commissioner for measurement of Gaonthan No.2/6. Accordingly, the map and report is filed on record. After witness summons, TILR Shriwardhan appeared in the Court for recording his evidence in respect of measurement. However, he submitted that the original record of measurement was missing. Some time was given to him to trace out the original record of measurement, however he unable to trace it. The letter of TILR is filed at Exh.No.126. Thus, in such situation it is not possible to record his evidence for want of original record of measurement. Therefore, for the reasons noted above, I come to conclusion that in present suit to ascertain the actual encroachment over the suit property, it is necessary to remeasure the Gaonthan No.2/6. Hence, I answer the point no.1 in affirmative.

As to point No.2 :

5) In order to measure encroachment over suit property the appointment of T.I.L.R. Shriwardhan as Court Commissioner is necessary. Hence, the following order:-

ORDER

(1) Application is allowed.

(2) T.I.L.R. Shriwardhan is appointed as a Court Commissioner for measurement of Gaonthan No.2/6

situated at village Dighi, Tah.-Shriwardhan, Dist- Raigad. The T.I.L.R. Shriwardhan. While measurement the T.I.L.R, Shriwardhan if found any encroachment over the suit property i.e. Gaonthan No.2/6, then he should specifically mentioned in the map and the report.

- (3) Plaintiff is directed to deposit necessary charges for measurement of Gaonthan No.2/6 situated at village Dighi, Tah.-Shriwardhan, Dist-Raigad. The plaintiff is directed to supply necessary documents to T.I.L.R. Shriwardhan for the purpose of measurement.
- (4) T.I.L.R., Shriwardhan to submit its report as early as possible.

Date: 01.01.2025

Sd/-
(**A. S. Satote**)
Civil Judge Junior Division,
Shriwardhan, Dist.-Raigad