

ORDER BELOW EXH. 36

This is an application moved by the defendant for appointment of Commissioner by virtue of Order XXVI Rule 9 of Code of Civil Procedure. The defendant contended that, the plaintiff has filed present suit for removing encroachment of Gaonthan No.57. The defendant denied the alleged encroachment. Therefore, in order to ascertain actual encroachment, it is necessary to measure Gaonthan No.57 & 49. If, both lands will measured through TILR then disputes between plaintiff and defendants will come to an end. Thus defendant prayed to allow the application. Plaintiff has filed his say at Exh. No.38 and strongly objected to the application. He stated that the defendant is trying to collect the evidence. However, he given no objection to measure the land by TILR Shriwardhan.

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:**

04) I gone through record and proceeding of case. The present suit is filed by plaintiff for removal of encroachment against defendant. The plaintiff stated that defendant has made encroachment over his Gaonthan No.57. The defendant denied the alleged encroachment. Thus, in order to ascertain the encroachment, joint measurement of Gaonthan No.57 and 49 seems to be necessary. Therefore, record shows

in present suit, if both lands 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. Hence, I answer the point no.1 in affirmative.

As to point No.2 :

04) In order to measure plot of plaintiff and defendant 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 joint measurement of Gaonthan No.57 and 49 situated at village Borlipanchatan, Shriwardhan Tah.-Shriwardhan, Dist-Raigad. The T.I.L.R. Shriwardhan. While measurement the T.I.L.R, Shriwardhan if found any encroachment, then he should specifically mentioned in the map and the report.
- (3) Defendant is directed to deposit necessary charges for joint measurement of Gaonthan No.57 and 49 situated at village Borlipanchatan, Shriwardhan Tah.-Shriwardhan, Dist- Raigad The plaintiff and defendant are 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: 29.01.2025

(A. S. Satote)
Civil Judge Junior Division,
Shriwardhan.