

**ORDER BELOW EXH. 9 IN R.C.S. NO. 326 / 2014**  
**(Rajesh Patil & anrs V/s Vishwajit Gaikwad & anrs)**

1] Read application filed by plaintiffs at Exh. 9 for appointment of TILR Miraj as Commissioner under Order 26 Rule 9 of the Code of Civil Procedure. Also read say filed by defendant at exh. 16.

2] That the suit is filed by plaintiffs for perpetual injunction and removal of encroachment and recovery of possession of encroached portion of suit land against defendants. In respect of suit property bearing gat no. 26 out of which agricultural land at the north side admeasuring 99 R situated in village Erandoli, Tq. Miraj. (which is more specifically described in para 1 of the plaint). Plaintiffs further contended that they have purchased suit land from Balasaheb Patil on 03/02/1996 vide registered sale deed as well as from Shahaji Patil vide registered sale deed dated 10/08/2004. The said suit property is situated at the north side of gat no. 26 and plaintiffs are in its possession and cultivating crops in it. Defendants are adjacent land owners. Plaintiffs further contended that defendants made encroachment over plaintiffs suit land. Plaintiff had measured the suit lands through private survey officer, in that measurement it was found that defendants made encroachment over 20 R land in the suit property. Plaintiff told to the defendants for the removal of encroachment but they refused to do so.

3] Thus plaintiff further contended that it is necessary to measure the property of plaintiffs and defendants for the purpose of demarcation of boundary lines, fixation of points and for determination of encroched area of land. Therefore plaintiff prays that the TIRL Miraj be appointed as Court Commissioner for measurement of suit property bearing gat no. 26 situated at village Erandoli, along-with map and report of TILR.

4] But defendant has resisted the plaintiff's application denying all contentions of application and submitted that court commissioner should not be appointed for collection of evidence. Defendants further contended that plaintiffs had already filed RCS No. 57/2010 for the fixation and demarcation of boundaries of the suit property but the same was dismissed by the court. Defendants are cultivating their land since last 15 years and taking different crops in their property. They further contended that application is not tenable hence application be rejected.

5] Thus from the submission of advocate of respective parties and on perusal of documents on record it is clear that the whole suit property is yet not measured by government surveyor, its boundaries are not demarcated. Therefore keeping reliance on the authority of Hon'ble High Court Nagpur Bench in which it was held that suits involving boundary dispute must be decided on the basis of measurement plan or map drawn to scale by competent government

officials from the office of TILR and DILR as the case may be. The above observations made in the case Meenadevi V/s Narmadabai, 2015(6) Mh L. J.(para 6). I have also placed reliance on judgment of Hon'ble Kerala High Court reported as, AIR 1996 Kerala 276 in a suit for permanent injunction restraining defendants from encroaching upon plaintiffs land. Application by plaintiff for appointment of local commissioner for measurement and demarcation of land entitled to be allowed.

6] Therefore in the light of above mentioned authority and fact of the case in hand it would be lawful to appoint TILR Miraj as a court commissioner for measurement, demarcation of suit property. Also for preparation map and report.

7] Local investigation under Order 26 Rule 9 of CPC becomes relevant. Thus the above authority applicable to the fact in hand. Therefore in the interest of justice and to avoid mis-courage of justice the matter is required to be elucidated by appointing court commissioner. Therefore I pass the following order.

### **ORDER**

1] Application allowed.

2] TILR Miraj is appointed as Court Commissioner to visit suit property after giving notice in writing to both the parties or their

Advocates regarding day and time of his visit for commission work to the suit property and asking them to remain present at the time of commission work at the suit land. Both the parties are directed to appear before the Commissioner accordingly.

3] The court commissioner is directed to submit his report along-with map as to his visit and local investigation including measurement of suit property and its demarcation of boundaries within a three months from the date of this order.

4] The plaintiff is directed to bear the cost and charges of measurement.

5] Issue commission letter accordingly to the court commissioner alongwith copy of Exh. 9 and other required documents.

Miraj.  
Date: 29/06/2017

Sd/-  
(S.M. Kolekar)  
II<sup>nd</sup> Jt. Civil Judge Jr. Dn., Miraj