

**ORDER BELOW EXH. 141 IN RCS No. 24/2010**

Perused the application and say filed. Heard learned counsels for both the parties.

2- The present application has been filed by the defendnts praying for the appointment of the court commissioner for inspection of the suit properties. It is contended that the plaintiffs have filed present suit for claiming relief of possession of encroached portion and fixation of boundaries of suit properties. It is further contended that in application for temporary injunction (Exh.110) the plaintiffs have mentioned about existence of well in Gat No. 91/3//2. The defendants have further contended that there was/is no well in Gat No. 91/3/2. Therefore, it is necessary to bring on record as to whether there is well in Gat No. 91/3/2 or not, and other factual position of said land and for that purpose he prayed to appoint court commissioner.

3- Per contra, the plaintiffs hasve denied all contentions of the defendants by filing say at Exh. 146.The plaintiffs have further contended that to prolong the hearing of the application for temporary injunction the defendants have filed present application. The plaintiffs further contended that they have produced documentary evidence about existence of well i.e. 7/12 extract of said property and report of MSEB. The defendants have filed false application ,which is requires to be rejected.

4- Gone through the pleadings of the parties. It appears that the plaintiffs have filed present suit for claiming possession of encroached portion and fixation of boundaries of suit properties alleging that the defendants have committed encroachment in suit property. In present application the defendants have contended that in T.I application the plaintiffs have falsely mentioned about existence of well. The

plaintiffs have contended that there is well in Gat No. 91/3/2/and he has filed documentary evidence about said land which clears the fact of existence of well.

5- On perusal of record and proceeding, it is seen that the plaintiffs have filed application at Exh. 66 for appointing TILR as court commissioner and accordingly the commission work was carried out by the TILR. On perusal of said report, it appears that in Gat No. 91/3/2 there is no mention of disputed well.

6- However, on perusal of pleadings, it appears that the plaintiffs are claiming reliefs of fixation of boundaries of suit properties, injunction and possession of encroached portion. They have not claimed any specific relief in respect of disputed well, but in application for temporary injunction (Exh.110), the plaintiffs have specifically claimed relief of temporary injunction in respect of disputed well situated in Gat No. 91/3/2 against the defendants. The defendants have filed present application on the basis of application (Exh.110) and denied the existence of the disputed well.

7- On perusal of 7/12 extract of Gat No. 91/3/2/, it is seen that there is mention about well in 00.02.00 area. This entry in 7/12 extract supports the contentions in their say (Exh. 146). Further more the plaintiffs have not claimed any relief against said well. The suit is in respect of encroachment, fixation of boundaries and injunction. The alleged well is not the subject matter of the present suit. In such circumstances, the defendants can bring on record the existence or non-existence of alleged well by adducing evidence at the time of hearing and for that purpose there is no necessity to appoint court commissioner for ascertaining the alleged well. When the documentary evidence clearly shows the existence of alleged well in Gat No. 91/3/2 and the plaintiffs have not claimed any specific relief in respect of said well, there is no

point to appoint court commissioner to ascertain existence or non-existence of alleged well. Hence, I pass following order.

**Order**

The application (Exh.141) hereby stands rejected.

Sd/-

Dt. 21/1/2016.

Civil Judge, Jr. Dn., Shirala.