

(ORDER BELOW EXH.17 IN R.C.S. NO. 816/2009)

1] The plaintiff has filed this application for appointment of T.I.L.R., as a Court commissioner to measure the suit properties.

2] It is contended that, the plaintiff has filed this suit for possession of encroached portion. Before institution of this suit, the plaintiff got measured the suit properties, but the concerned surveyor has not specifically mentioned the extent of encroached portion and the defendant also disputed the said measurement in his W.S. In such circumstances, it is necessary to appoint T.I.L.R. as a Court Commissioner to measure suit properties.

3] The defendant filed say vide exh. 18 and denied the contents in the application. It is contention of of the defendant that, the plaintiff has already got measured the suit properties and by relying upon that measurement, the plaintiff has filed this suit for possession of encroached portion. Issues are already framed and matter is on the stage of evidence . Only for prolonging the matter, the plaintiff has filed this application. It is further contended that, the plaintiff has already filed such type of application vide exh. 15. In such circumstances, this application is not tenable. Hence, prayed for rejecting this application.

4] Heard learned counsels appearing for both sides, gone through

the material on record.

5] On perusal of plaint, it appears that, the plaintiff has filed this suit for possession of encroached portion. It is pleaded that towards southern side of suit property, there is defendant's field gat no. 286. On perusal of measurement map sheet "C" produced on record with list exh. 4, it appears that, concerned surveyor has not specifically mentioned about extent of encroached portion. The dispute between the parties is about the boundaries of the suit properties. In such circumstances, it is proper to appoint Court Commissioner for the purpose of elucidating the fact in issue between the parties.

The defendant taken objection to this application on two grounds, that the plaintiff has already got measured the suit properties and plaintiff has also filed same application vide exh. 15. So far as his first objection is concern, the measurement map sheet 'C' of the previous measurement which is carried before institution of this suit is not clear on the point of extent of encroached portion. Further though plaintiff has already got measured the suit properties, before institution of this suit, it means, it is not that, he is not entitled to get measure his properties again, particularly when he is not satisfied with the previous measurement. So far as second objection is concern, plaintiff has not pressed application exh. 15. In such circumstances, there is no substance in both the applications. Hence, this Court pass following order.

ORDER

- 1] Application is hereby allowed.
- 2] T.I.L.R. Malshiras is hereby appointed as a Court Commissioner.
- 3] The Court Commissioner is hereby ordered to measure suit properties as well as defendant's field gat no. 286, by giving at least 15 days prior notices to the plaintiff, defendant and all other co-owners in field gat nos. 287 and 286 and to all the adjacent land holders of these properties and to submit his detailed report with the documents prepared by him on or before 10-12-2013.
- 4] The plaintiff is hereby ordered to deposit necessary measurement fee directly in the office of T.I.L.R. Malshiras within 15 days from the date of this order.
- 5] After depositing measurement fee, affixing process fee and supply of necessary documents, writ be issued accordingly to T.I.L.R. Malshiras.

Dt. 08-08-2013.

(D.B. Mane)
Jt. Civil Judge Jr. Dn.
Solapur.