

**ORDER BELOW EXH. 17, APPLICATION FOR APPOINTMENT OF
COURT COMMISSIONER**

1. The plaintiff has filed this application under order 26 Rule 9 of Code of Civil Procedure for appointment of TILR as commissioner to carry out the measurement and to fix the boundaries of the suit properties.
2. This is suit for permanent injunction restraining the defendants from causing obstruction. As per contention of the plaintiff he is owner and possessor, of the suit property. The defendants encroached upon the suit land and disputed the boundaries. The defendants denied to get the suit land measured by TILR. Therefore, the plaintiff approached to the TILR for measurement of the suit land. However, the TILR not measured the land as the defendant not consented. Therefore, it is necessary to appoint TILR as court commissioner for measurement for showing the area of respective parties and fixing the boundaries. Hence, the plaintiff instituted this suit and moved this application accordingly.
3. Defendants resisted the application filing their say. The defendants contended that the whole Gat No. 190 alongwith its sub-divisions are required to be measured. Lastly, defendants prayed for rejection of the application. The defendant No. 3 have no objection to this application.
4. Heard learned counsel for plaintiff Shri. S.B. Kapse and learned counsel for defendants Shri. R.T. Zalte and Shri. P.S. Sakhare. Perused record.
5. Considering the rival pleadings and contentions of both the parties and documents produced in support of it, following points arise for my determination to which I record my findings thereon for reasons to follow :

	<u>POINTS</u>	<u>FINDINGS</u>
1	Whether the appointment of TILR as court commissioner is necessary to elucidate the matter in controversy?	... In the affirmative.
2	What order ?	As per final order.

REASONS**POINT NO. 01:-**

6. Order 26 rule 9 of CPC contemplates appointment of court commissioner for the purpose of elucidating the matter in dispute. It has to be seen that in this case, whether appointment of court commissioner is necessary.

7. It is admitted that the plaintiff is owner and possessor land Gat No. 190/4. The defendants are adjoining land holders in the same Gat numbers of their respective sub-divisions. The defendants denied the story of encroachment and also denied that the defendants are trying to destroy, common boundaries. The defendants also want to get measure and identify their respective areas as per their ownership in 7/12 extract. It means there is dispute about identity and boundary of the suit land.

8. From the documents on record, it appears that, this is case of a land encroachment, identity of the land and boundary are in dispute. The plaintiff approached the T.I.L.R. Office for measurement. Therefore, in such circumstances, it will be helpful to this Court to adjudicate the matter effectively, to get the land measured, by appointing T.I.L.R. As Court Commissioner.

9. In the case of **Shri Bhupendra s/o Bhagwat Turkar Vs. Shri**

Homeraj s/o Zituji Meshram reported in 2014(3) All MR 365, The Hon'ble our High Court held that, *in the cases of boundary dispute and identity of the land, measurement thereof and area of the land is needed to be considered preferably on the basis of authentic evidence and map of the land drawn by competent public official. It is further held that, it is always desirable to get the suit land or field measured by an expert or competent public official to find out the area of the suit land encroached upon more so, when oral evidence can not help the Court.* In view of above ratio, in this case also, there is requirement to get measure the suit land. Therefore, on the basis of above reasons and discussions, I came to conclusion that, appointment of court commissioner to T.I.L.R. is requisite and proper for the purpose of elucidating matter in dispute. Hence, I inclined to record finding against point no.1 in affirmative.

10. **POINT NO.2:-** In answer to this point, I pass the following order:

ORDER

1. Deputy Superintendent of Land Record, Barshi, Dist. Solapur, is hereby appointed as court commissioner under Order 26 Rule 9 of the Code of Civil Procedure.
2. The court commissioner shall take measurement of the land Gat No. 190 of village Dhorale, Tal. Barshi alongwith holders of each sub-divisions (i.e. Gat No. 190/1, 190/2, 190/3 and 190/4) in presence of the parties and their advocates, after giving notices to them, within 3 months after depositing necessary fees by the plaintiff.
3. The Court Commissioner shall prepare map showing therein boundaries of each holders of each sub-divisions (Gat No. 190/1, 190/2, 190/3 and 190/4) in the Gat No.

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190. The court commissioner shall also show permanent boundary marks.

4. The Court commissioner shall prepare report of measurement and file it on record along with measurement map.

5. The plaintiff is directed to deposit required expenses in the Office of Dy. S.L.R. Barshi, as early as possible and preferably within one month from this order.

6. Issue writ to the court commissioner accordingly.

(Jahangir R. Pathan)

3rd Jt. Civil Judge(J.D.) Barshi.

Date: 29/01/2022

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CERTIFICATE

I affirm that the contents of this P.D.F. file order are same word to word, as per the original Order.

Name of the Stenographer : S.V. kokate

Court name : 3rd Jt. CJJD & JMFC, Barshi.

Date : 29/01/2022

Order signed by the : 29/01/2022

Presiding Officer on

Order uploaded on : 31/01/2022