

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

914 CA/1960/2016 IN SA/238/1992

NANASAHEB NAMDEO TURAKMANE.
VERSUS
DASHRATH PANDURANG SOLAPURE & OTHERS.

...
Advocate for Applicant : Totala Rameshwar F.
Advocate for Respondents 1 to 3 : Mobin Shaikh h/f. R.N. Dhorde,
Sr. Counsel

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CORAM : T.V. NALAWADE, J.
DATED : 15th June, 2016.

ORDER :

1. The application is filed for appointment of T.I.L.R. as Court Commissioner and for taking fresh measurement of two lands, lands of plaintiffs and defendants to ascertain the exact encroachment. Learned counsel Shri. Mobin Shaikh holding for Shri. R.N. Dhorde, Senior Counsel submitted that copy is not supplied and he wants to file reply. Seen the noting made by this Court on 2.5.2016. The application was filed in January 2016 and time was given to respondents, defendants in May. After more than one month, the submission of aforesaid nature is being made by the learned counsel for respondents, defendants.

2. It appears that the suit filed for removal of encroachment of 12 R. portion was decreed by the Trial Court, but the First Appellate Court has set aside the decree by holding

that the evidence of the Cadestral Surveyor is not convincing in nature and due to absence of notice. This Court has carefully gone through the reasoning given and there is the mention that Cadestral Surveyor gave evidence that notice was given to defendants of the measurement and there is the record to show that notice was sent to defendant No. 1. Defendant Nos. 2 and 3 are real brothers of defendant No. 1 and they are Hindus. In view of the aforesaid circumstances and as only due to the some discrepancies in the evidence of Cadestral Surveyor, the First Appellate Court has set aside the decree, this Court holds that to put an end to the dispute and to get finality it is desirable that fresh measurements are taken by T.I.L.R. to ascertain the encroachment. In view of the facts of this case, this Court holds that fresh measurement is necessary.

3. In the result, Civil Application No. 1960/2016 is allowed. T.I.L.R. of concerned Tahsil is hereby appointed as a Court Commissioner. He is to make measurement as prayed in the prayer clause 'B' after giving notices to both the sides. Even if after sending notices, if nobody turns up and does not remain present at the time of measurement, measurement is to be carried out and the report is to be submitted to this Court. Charges of the measurement are to be deposited directly in the

office of T.I.L.R. by using the present order and after that, within one month the measurement is to be made by the Cadestral Surveyor. In those terms, the application is allowed and disposed of.

4. The matter is to be listed after receipt of the report of T.I.L.R. Liberty is given to both the sides to get circulation in case there is need.

[T.V. NALAWADE, J.]

ssc/