

06/02/2019

For orders,

**ORDERS ON IA NO.V UNDER ORDER
XXVI RULE 9 AND 10 R/W SEC.151 OF CPC**

The defendant counsel filed the above application praying to appoint Court Commissioner to conduct local investigation over suit schedule properties regarding present status, measurement and possession of the suit schedule properties and such other features in the interest of justice.

2. In the annexed affidavit, it is stated that defendant No.16 family members are residing in item No.1 of the suit schedule property, item No.2 i.e., Sy.No.110 and 111 of RTC's column.9 shows as BEML Employee Housing Society, item No.3 is Sy.No.233, 234, 235 and 236, RTC's column No.9 shows as Sarkari (Government), item Nos.4,5 and 6 of the suit schedule properties are not in existence, appointment of the Court Commissioner is very essential in order to prove the present status, measurement and possession of the suit schedule properties. Hence, prayed that allow the application.

3. The plaintiff counsel filed objections to the above application stating that the application is not maintainable in the eye of law. The plaintiffs have filed suit against the defendants for the relief of partition and separate possession in respect of suit schedule properties. As such, the application filed by defendant Nos.16 to 20 are not maintainable. The application filed by the defendant Nos.16 to 29 is premature one. The application filed by the defendant Nos.16 to 20 is without cross-examining P.W-1 and as such, the application is not maintainable at this stage. The duty of the defendant Nos.16 to 20 is to establish their defence by cross-examining P.W-1 and thereafter to adduce their evidence by producing oral and documentary evidence. Without doing so, the defendant Nos.16 to 20 have filed the above application to collect the evidence from the Court Commissioner. Hence, prayed that dismiss the application.

4. Having heard the learned counsel, the following points arise for my consideration:

1. Whether the application I.A. No.V filed by defendant Nos.16 to 20 deserves to be

allowed ?

2. What Order?

5. My answer to the above points are as under ;

Point No.1: Partly in Affirmative

Point No.2: As per final order

for the following:

REASONS

6. **Point No.1:** The plaintiffs have filed the suit against the defendants seeking the relief of partition and separate possession and declaration of sale deed dated 30/07/2012 is not binding on the share of the plaintiff and for mesne profits and such other reliefs. When the case was posted for cross-examination of P.W-1, at that time defendant Nos.16 to 20 counsel filed the above application. It is significant to note that evidence not yet completed on both the sides. At this stage, if the Court Commissioner is appoint, there would be chances of collecting evidence through Court Commissioner. Hence, in my view after adducing the evidence on both the sides, if the Court Commissioner is appointed, it would meet with justice.

Accordingly, I answer point No.1 partly in Affirmative.

7. **Point No.2** : In the result for the foregoing reasons, I pass the following :

ORDER

I.A. No.V under Order XXVI Rule 9 and 10 R/w Sec.151 of Code of Civil Procedure filed by the defendant Nos.16 to 20 is herewith partly allowed permitting the defendant Nos.16 to 20 to appoint Court Commissioner in their own costs after adducing oral and documentary evidence on both the sides.

The Commissioner's fee is fixed at Rs.10,000/-.

For cross-examination of P.W-1 by 21/02/2019.

(Dictated to the Judgment Writer, transcribed by her, transcribed by her, corrected and then pronounced by me in open court on this the 6th day of February, 2019.).

(NAGAVENI)
V ADDL.CITY CIVIL JUDGE
BANGALORE