

KABG040001062013



23.01.2024

O.S.No.45/2013

ORDERS ON MEMO OF INSTRUCTIONS

Counsel for plaintiff had filed an application at I.A.No.19 U/O.26 Rule 9 of C.P.C. seeking for appointment of Court commissioner to survey and measure the suit property. The said application was allowed on 09.04.2021 and the Taluka Surveyor in A.D.L.R. Office, Belagavi was appointed as Court commissioner to measure the suit property, to fix the boundary lines and to report the encroachment made by the defendant, if any, upon the suit property. After allowing the said application, both the parties filed their memo of instructions and the Court passed an order on memo of instructions on 18.10.2021 and issued commissioner warrant to carry out the commission work and the Court commissioner submitted his report on 12.10.2022. On 07.11.2022, counsel for defendants submitted no objections to commissioner's report and on 16.11.2022, counsel for plaintiff filed his objections to

commissioner's report. Later, Court commissioner was examined as CW-1 on 24.01.2023 and both the counsel cross-examined CW-1. Both counsel addressed their arguments on commissioner's report and order was passed setting aside the commissioner's report on 14.02.2023. Later, the matter was posted for hearing for appointment of Court commissioner afresh.

2. Heard the arguments on both sides and both parties filed their memo of instructions.

3. The memo of instructions filed by the plaintiff is as under :

i) The commissioner shall note the boundary line of VPC No.178 is 5 cubique feet (7.5 feet) after tamarind tree towards south and from that boundary line how much area the defendants have encroached over the property of plaintiff bearing VPC No.178.

ii) The commissioner shall make measurements of North-South of property of plaintiff VPC No 178 taking the southern boundary line of VPC No 178 as 5 cubique feet i.e., 7.5 feet after tamarind tree towards south and note down measurement North-South.

iii) The commissioner shall make the measurements of North-south of the property of plaintiff VPC No 178 taking the Northern boundary

line of VPC No 178 public road existing towards North and measure North-South 132 feet and note down where the southern boundary will come.

iv) The commissioner shall make the measurements of East-West of property of plaintiff VPC No 178 taking the Eastern boundary line of VPC No 178 public road existing towards East.

v) The commissioner shall measure the VPC No 177 of defendant from southern boundary line from school building wall and till the end of their building and note down what is the measurement of North-South.

vi) The commissioner shall measure the portion in possession of defendants VPC No 177 North-South as well as east-west.

vii) The commissioner shall draw a map depicting the existing things and constructions over both the VPC Nos.178 and 177.

viii) The Commissioner shall also note down and measure the property of plaintiff VPC No 176 and existing old house property over the same.

ix) The commissioner shall note down that what are the constructions made by defendants.

x) The commissioner shall note down that, what is the measurement from eastern road to old house of plaintiff in VPC No 176.

xi) The commissioner shall also make the measurement of constructions and other open space in possession of defendants till the southern end.

xii) The commissioner shall also note down that what is measurement of property VPC No.177 i.e. from boundary line of VPC No.178 i.e. after 7.5 feet after tamarind tree till the southern end.

xiii) The commissioner shall also note down any other things pointed out by plaintiff at the time of commission work.

xiv) The Court commissioner shall also take note the things which he feels are necessary.

xv) The Court commissioner shall also take note of all the things over the VPC Nos.177 and 178 and draw a map showing all the above things in the said map.

4. The memo of instructions filed by the defendants is as under :

i) The Court Commissioner is requested to give individual notice to the defendant Nos. 1 to 3 well in advance fixing the time, date and month for carrying out the commission work on the spot as the defendants are agriculturist who used to attend day-to-day agricultural affairs.

ii) The Court Commissioner is requested to take the actual measurements of G.P. No.177 of Badas

Village as per the Registered Sale Deed dated 08.11.1971, held and possessed by the defendants by showing the specific boundaries of G.P.No.177 of Badas Village with measurements in Sq.ft.

iii) The Court Commissioner is requested to show the location of standing tamarind tree situated in G.P.No.177 held and possessed by the defendants.

iv) The Court Commissioner is requested to make the local inspection and show in his report the existing the residential houses held and possessed by the defendants in G.P.No.177 of Badas Village.

v) The Court Commissioner is requested to show in his report regarding the construction of lavatory in backyard of G.P.No.177 of Badas Village held and possessed by them.

vi) The Court Commissioner is requested to take the measurements of the passage left by the defendants towards their residential house to reach the main road situated towards eastern side of G.P.No.177 to the extent of an area in South-North in width and East-West in length out of G.P.No.177 of Badas Village.

vii) The Court Commissioner is requested to show the tamarind tree held and possessed by the plaintiff in his property bearing G.P.No.178 of Badas Village.

viii) The Court Commissioner is requested to ascertain the correct point or line as per

authenticated document of Survey Department nor Panchayat Authorities for the purpose of taking measurement of G.P.No.178 of Badas Village as well as G.P.No.177 of Badas Village.

ix) The defendants reserves their right to point out or give any suggestions or instructions to the Court Commissioner at the time of carrying out commission work on spot.

The Court Commissioner is requested to consider the memo of instructions submitted by the defendants while carrying out the commission work.

5. On perusal of aforesaid instructions given by both the parties, it discloses that the memo of instructions is beyond the scope of orders passed by this Court on I.A.No.19. I.A.No.19 was filed by the plaintiff only for appointment of Court commissioner to survey and measure the suit property and note down the existence and possession of the said property. As such, this Court is of the opinion that the Court commissioner has to follow the instructions given by this Court while conducting the commission work. Therefore, I proceed to pass the following:

ORDER

The Court commissioner is directed to follow the instructions as under :

i) *He shall issue prior notice to both the parties by RPAD to keep themselves*

present in the spot when he visits the suit property.

ii) He shall measure the suit property by fixing the boundary lines and measure the encroachment alleged to be made by the defendants in the suit property.

iii) He shall measure the property of defendants bearing GP No.177 of Badas Village to ascertain the encroachment, if any.

iv) He shall submit the report by conducting commission work as directed above.

The Office is directed to issue commissioner warrant afresh along with copy of this order, if PF is paid, returnable by 22.02.2024.

**Prl. Civil Judge & JMFC,
Belagavi.**