

KABG040021402022



IN THE COURT OF THE II ADDL.CIVIL JUDGE & JMFC, AT:
BELAGAVI

**Present: Sri. Nagaraj Barki. B.A., LL.B.,
II Addl. Civil Judge & JMFC.,
Belagavi.**

Dated: This, the 7th day of August 2024

ORIGINAL SUIT NO.1234/2022

Smt. Sharada W/o Hanamantappa Bankadmani
Age: 65 Years, Occ: Housewife
R/o. CTS.No.6803/C, Sector No.9
Satya Marg, Srinivas Nilay
Anjaneya Nagar, Belagavi.

(By Shri. S.G. Kakatkar, Adv.)

.... Plaintiffs

Vs.

Shri. Swapnil S/o Prafull Wake
Age: 45 Years, Occ: Pvt Service
R/o. CTS.No:6803/A, Anjaneya Nagar
Belagavi.

(By Shri. M.J Jadhav, Adv.)

.... Defendant

PARTIES TO I.A.NO.V

Applicant/Defendant:

Shri. Swapnil S/o Prafull Wake

Vs.

Opponent/Plaintiff:

Smt. Sharada W/o Hanamantappa Bankadmani

**ORDERS ON I.A.NO.V FILED BY THE DEFENDANT UNDER
SECTION.151 OF CPC**

Instant application filed by defendant/applicant U/s. 151 of C.P.C for requesting the Court to keep the court commissioner report dated 25.09.2023 in abeyance.

2. The defendant has filed an affidavit to the application and he is stating that the plaintiff has sought appointment of Court Commissioner for local inspection at pre-trial stage and the Court Commissioner submitted his report on 25.09.2023. The defendant has filed objections to the report of the Court Commissioner. The report of the Court Commissioner is in pre-trial stage, it is not permissible because judicial mechanism cannot be utilized for collecting evidence to conducting the trial. Therefore, it is just and necessary to keep the Court Commissioner report dated 25.09.2023 in abeyance.

3. On the other hand, the plaintiff has opposed the said application, it is contending that after submission of no objection

of the defendant side to appoint the Court Commissioner, the Court appointed the Court Commissioner for local inspection, thereafter the court commissioner submitted the report. The said report is a part of the Court record unless and until the Court Commissioner cross-examine, the truth will not come on record. Therefore, further proceeding of the Court Commissioner cannot be keep in abeyance and entire case of plaintiff is depend on the Court Commissioner report. Hence, prayed to reject the application.

4. Heard hearing on learned counsel for plaintiff and defendant, perused the records placed before the Court.

5. On perusal of records it appears that the plaintiff filed the present suit for the relief of permanent and mandatory injunction over the suit property. The defendant has filed the present application to keep the Court Commissioner report in abeyance after filing objection to the Commissioner report.

6. Admittedly, the Court Commissioner was appointed to local inspection before commencing the trial and submitted the report by the Court Commissioner before the Court. No doubt, the report of the Court Commissioner is part of the Court record. Interestingly, the plaintiff has stated in para No.4 of his objection

to the present application that the case of the plaintiff is depend on Court commissioner report. It is material to note that, the plaintiff has to prove his case on his own strength and the Court cannot delegate power to the Court Commissioner for decide the matter. It is important to note that both parties to the suit are required to prove the evidence independently to support of their respective case. The learned counsel for the defendant has relied upon decision of the Hon'ble High court of Karnataka, in WP No.53579/2014(GM-CPC), Chanrdakan H.A. Shetty V/s Manasa builders and developers. In support of this it is argued that in a suit for mandatory injunction or permanent injunction, it is for the parties to establish their case by producing evidence before the court and thereafter if the material on record is not sufficient then it is open for the parties to seek local investigation. Apart from that, If, heard on the report of the Court Commissioner, it would amount to granting the main relief before trial on both sides. In view of the above reasons, this Court comes to the conclusion that the report of the Court Commissioner is required to consider while adjudicate the matter on merit. Hence, In view

of observation made above, IA No.V filed by the Defendant under section 151 CPC is disposed as under:

The report of the Court Commissioner will be considered, while deciding the matter on merits.

(Dictated to the Stenographer directly on the computer and typed by her and corrected by me and then pronounced in the open Court on this 7th August 2024)*

**II Addl.Civil Judge & JMFC
Belagavi.**