

KABG040021402022



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

**Present: Smt. Lakshmibai Basanagoud Patil,
B.A, L.L.B.(Spl),
II Addl. Civil Judge & JMFC.,Belagavi.**

Dated this the 19th June, 2025.

O.S No.1234/2022

Plaintiff: Smt. Sharada W/o Hanamantappa
Bankadmani.

Versus

Defendant: Shri. Swapnil S/o Prafull Wake

PARTIES TO I.A.NO.VI

Applicants/ Plaintiff: Smt. Sharada W/o Hanamantappa
Bankadmani

Versus

Opponent/Defendant: Shri. Swapnil S/o Prafull Wake

**ORDER ON I.A. NO. VI FILED BY THE PLAINTIFF
UNDER SECTION 151 OF CPC**

The counsel for plaintiff has filed I.A.No.VI under
Section 151 of CPC for permitted to offer himself for

cross examination of the Court Commissioner report submitted before this Court.

2. An instant application is accompanied with an affidavit sworn by the plaintiff wherein it is stated that due to damage caused to the plaintiff by defendant, the plaintiff has facing problem every day by leakage of water from his property to plaintiff property. The plaintiff has filed an application to appoint the Court Commissioner to verify the property and look after the source of leakage of water in his property to plaintiff property. Accordingly, Court Commissioner carried out his work and submitted report before this Court. The defendant by an application prays Court to keep Court Commissioner report in abeyance to that affect the plaintiff strongly opposed and filed detail objection hearing from both side. IA No.V filed by defendant came to be dismissed.

3. Thereafter the Court issued notice to Court Commissioner to offer himself for cross examination,

but there after his evidence was closed without taking cross examination. Therefore it is submitted that when the Court Commissioner has submitted his report he must go in to venture of cross examination. If now his cross examination is not taken up then the Court Commissioner report cannot be proved and more ever, if he is called for cross examination after closure of both side evidence there is possibility of not to remember the Court Commissioner report and work done by him. Therefore his cross examination is very much necessary before the Court. Hence, prays to allow the application.

4. The defendant has filed objection to the application wherein it is contended that the suit is posted for leading evidence by the plaintiff at that time the plaintiff has got appointed the Court Commissioner. The plaintiff has not chosen to lead his evidence by stepping into the witness box and subjecting herself for cross examination of the Court Commissioner at this

stage, the Code of Civil Procedure-1908 mandates that first the plaintiff has to begin with the evidence, the plaintiff forgoing the same is insisting for cross examination of Court Commissioner which amount to collecting of evidence by using the judicial mechanism and the same is not permissible in law.

5. The application filed by the defendant in IA No.5 for seeking orders for keeping the Court Commissioner report in abeyance came to be disposed off by this court vide orders dated 07.08.2024 with an observation that the Court Commissioner report will be considered while deciding the matter on merits and the suit was posted for plaintiff evidence, the said order has attained finality. In spite of the said orders, the plaintiff is all along insisting for cross examination of the Court Commissioner in the top noted case which is against the settled principles of law. The plaintiff in spite of having personal knowledge of the above said orders has sworn to false averments at paragraph No.II of the affidavit

annexed to IA. Hence, order may kindly be passed for initiating proceedings under section 340 of Cr.P.C (now BNSS) against the plaintiff for swearing to false affidavit. Hence, prays to reject the application.

6. Heard on learned counsel for plaintiff and defendant and perused the material on record, the following points arise for my consideration.

1. Whether the plaintiff made out grounds to allow the present application?
2. What order?

7. My answers to the above points are the following:

Point no.1: In the Affirmative

Point no.2: As per the final order for the following:

REASONS

8. POINT NO.1: The present suit filed by the plaintiff against the defendants for the relief of permanent and mandatory injunction.

Perused documents available on record, during the pendency of suit, the plaintiff has filed application U/o 26 Rule 10 of CPC this Court came to be allowed and submitted the report by the Court Commissioner this Court was passed the order on 07.08.2024 i.e., the report of the Court Commissioner will be considered while deciding the matter on merits. Therefore, after disposal of IA No.V, the counsel for plaintiff filed present application seeking permitted to offer Court Commissioner for cross examination in related to Court Commissioner report.

At this stage, this Court glance the provision of U/o 18 Rule 1 of CPC that "Right begin- The plaintiff has the right to begin unless the defendant admits the facts alleged by the plaintiff and contends that either in point of law or on some additional facts alleged by the defendant the plaintiff is not entitled to any part of the relief which he seeks, in which case the defendant has the right to begin".

Therefore, the plaintiff has must begin the evidence himself firstly, both parties ought to lead the

evidence their side after completion of the both side evidence. The Court Commissioner has to be examined if it is necessary. However, the plaintiff has not made out grounds to allow the application. In view of above discussion, it is to be noted that, in the reasons of above stated not acceptable one. Accordingly, this Court answered Point No.1 **in the Negative.**

9. POINT NO.2: As per the above-said discussion, I proceed to pass the following:

ORDER

I.A.No.VI filed by the plaintiff
under Section 151 of CPC is hereby
rejected with no costs.

(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 19th June 2025)*

(Lakshmibai Basanagoud Patil)
II Addl. Civil Judge & J.M.F.C,
Belagavi.