

KABG040012332009



11.07.2022

O.S.No.451/2009

**ORDER ON COMMISSIONER REPORT
DATED 05.01.2022**

Heard both sides on the commissioner report.

2. In this suit, the Surveyor, A.D.L.R. Land Records, Belagavi was appointed as Court commissioner on 16.07.2014. Finally, the commissioner was re-appointed on 30.09.2021 and the commissioner was directed to carry out the work as per order dated 16.07.2014. The commission warrant was issued and the Court commissioner has submitted the commission report along with the map. The plaintiffs and the defendants No.1 and No.2 have filed objections to the commissioner's report.

3. The objections of the plaintiffs to the commissioner's report are as follows :

They have stated that the commissioner's report is partly correct and partly wrong. They have further

stated that the commissioner has not followed the memo of instructions submitted by the plaintiffs and the defendants and not carried out the work as per the memo of instructions. They have further stated that the Court commissioner has not measured the property fallen to the shares of Shri. Vilas Jivaji Kulkarni and Ashok Jivaji Kulkarni and also the property fallen to the share of Shri. Shankar Rao Kulkarni. The Court commissioner has not measured the set back areas left by the defendants and other encroachments with attached portion of the properties belonging to the defendants. The Court commissioner has not properly mentioned the deviation of the boundaries of the plaintiffs' property due to encroachment with measurements of set back area. They have further stated that the Court commissioner submitted the exact location of the property of the plaintiffs measuring 05 Guntas 09 Annas out of total area.

4. The objections of the defendants No.1 and No.2 to the commissioner's report are as follows :

They have stated that the Court commissioner has not carried out the commission work as per the memo of instructions and without collecting the documents from the respective offices such as ADLR, DDLR, Gram Panchayat, Hindalaga. He has not followed the correct procedure in preparing the report.

The Court commissioner has not answered the queries sought by the parties. Hence, he prayed to reject the commissioner's report.

5. The learned counsel for the defendants No.1 and No.2 has argued that the Court commissioner report is correct and it can be relied. He has further argued that the plaintiffs have not mentioned which part of the commissioner report is correct and which part of the commissioner report is incorrect. He has further argued that the measurement of the adjoining property is not a ground for setting aside the commissioner report. He has further argued that the objections pointed out by the plaintiffs cannot be the ground for setting aside the commissioner report. He has relied upon the rulings reported in **AIR 2000 Panjab and Haryana 38 and AIR 2006 SC 4855**.

6. The learned counsel for the plaintiffs has argued that the Court commissioner has not answered the questions in the memo of instructions. He has not carried out the commission work as per the memo of instructions. Hence, he prayed to reject the commission report.

7. In this case, both sides have stated that the Court commissioner has not carried out the commission work as per the memo of instructions and not answered the

queries. To decide the objections of the parties, it is just and essential to issue summon the Court commissioner for recording his oral evidence. As per Order 26 Rule-10(3) of the C.P.C., the Court commissioner may be examine to testify the correctness of his report. When both sides have objected the report on the ground of the commissioner report is not in accordance with the memo of instructions, then it is just and proper to examine the Court commissioner on his report. Hence, I proceed to pass the following :

ORDER

Issue witness summons to the Court commissioner for examine him on the commission report.

For evidence of commissioner, call on 21.07.2022.

**Prl. Civil Judge & J.M.F.C.,
Belagavi.**