

KABG040012332009



17.02.2024

O.S.No.451/2009

### **ORDER**

Counsel for plaintiffs filed memo stating that the Court commissioner was appointed and entrusted with commission work as per order dated 16.07.2014 and the Court commissioner carried out work but he did not followed the memo of instructions submitted by plaintiffs and defendants and has submitted incomplete report and same got rejected as per order dated 09.12.2021. Hence to decide the issues involved in the case, the Court commissioner warrant may kindly be issued to conduct the commission work as per memos of instruction of plaintiffs and defendants.

2. Counsel for defendants has filed objections to the memo dated 19.07.2023 contending that the memo is misconceived and untenable in the eye of law and the same deserves to be dismissed. It is further contended that the plaintiffs are aware that

the property in question is located within the jurisdiction of Hindalga Gram Panchayat and it has assigned respective Gram Panchayat numbers to the respective buildings, houses as is constructed by the respective persons and accordingly referring merely to the P.T. Sheets, the property in question cannot be surveyed which is also one of the ground as is expressed by the Court Commissioner on the date of visiting the property and Court commissioner also admitted in his cross-examination that there is difference in the area shown in the sale deed and area in the possession of the plaintiffs and also admitted that the difference in the area shown in the sale deed and the difference in the actual enjoyment came to his knowledge after surveying the suit property. It is further contended that the Court commissioner during his cross-examination admitted that already plots laid in R.S.No.98/1/1 and already buildings are constructed over the 60% of the plots and due to the construction of buildings in the suit property, it is not possible for him to conduct the Court commissioner work and it is not possible for him to show the suit property on account of the difference in area shown in the sale deed and area in the actual possession of the plaintiff. It is contended that the plaintiffs are using the jurisdiction of this Court as a tool in their hands and such

approach and tactics adopted by the plaintiffs in harassing the defendants requires to be curbed by this Court by rejecting the memo under objections. It is further contended that since more than eight years, the plaintiffs have made all their efforts in delaying the proceedings by misleading the Court to extend its hand in collecting the evidence through the Court commissioner and now after matter of after thought, the plaintiffs have resorted illegal tactics by filing the memo under objections and same deserves to be rejected. It is contended that after closure of the evidence of Court commissioner, now to fill in the lacunae and in order to cause further delay in the proceedings, the plaintiffs intend to further mislead the Court and hence the memo dated 19.07.2023 deserves to be rejected. It is further contended that it seems in order to harass the defendants, the plaintiffs are resorting to one or the other bilateral tactics and hence the memo dated 19.07.2023 under objection is devoid of any merits and the same deserves to be rejected.

3. Heard arguments of counsel for plaintiffs and counsel for defendants.

4. The present suit is filed for the relief of permanent and mandatory injunction and it is the case of the plaintiffs that they are the owners of suit

property in possession and defendants have put up construction in the area o,n,c,d, and m,l,k,j in schedule 'A' and 'B' properties as per sketch annexed to the plaint. After conclusion of evidence on both sides, this Court passed an order on 06.03.2012 allowing I.A.No.2 filed U/O.XXVI Rule 9 R/w. Sec.151 of C.P.C. seeking for appointment of Court commissioner to prepare sketch of the entire R.S.Nos.98/3 and 99/1 of Hindalaga Village showing 1/3<sup>rd</sup> share in middle portion of plaintiffs which is the suit property. Further, on 16.07.2014, the Surveyor A.D.L.R. Belagavi was appointed as Court commissioner to carry out the commission work. Further, on 04.10.2018, this Court passed an orders on I.A.No.17 filed by the plaintiffs U/Sec.151 of C.P.C. seeking to reopen the case and to direct the Court commissioner to carry out the commission work as per order dated 16.07.2014. Further, the similar application was allowed on 30.09.2021 by this Court and directed the Court commissioner to carry out the work entrusted as per order dated 16.07.2014. The Court commissioner submitted his report on 06.01.2022 and counsel for plaintiffs and defendants filed their objections to the commissioner report. On 11.07.2022, witness summons was issued to Court commissioner for evidence and after his examination, on 09.12.2021 the report of Court

commissioner was rejected as the commissioner himself had admitted that he has not carried out the commission work as per the memo of instructions and he has not answered the queries regarding the alleged encroachment and has not measured the buildings in the suit property. However, he has stated that it is not possible for him to show the suit property on account of the difference in area shown in the sale deed and the area in the actual possession of the plaintiffs. In the present case, the plaintiffs have alleged encroachment by the defendants over their property and defendants have denied the same. In order to ascertain the alleged encroachment, this Court had appointed Court commissioner and the Court commissioner has admitted that he has not answered the queries regarding the alleged encroachment and not carried out the commission work as per memo of instructions. Since the commissioner report submitted by Court commissioner is set aside, this Court feels it necessary to re-issue commission warrant to ascertain the alleged encroachment. Hence, I proceed to pass the following :

**ORDER**

*The memo dated 19.07.2023 is  
hereby allowed. Consequently, the Surveyor*

*A.D.L.R. Belagavi is appointed as Court commissioner.*

*Further, the Court commissioner is directed to carry out commission work as per memo of instructions filed by both parties.*

*The Court commissioner is advised to adopt new techniques like total station survey or any other mode to carry out commission work to ascertain the alleged encroachment.*

*Further, counsel for plaintiffs is hereby directed to pay commissioner fee of Rs.2,000/-.*

*Issue commission warrant to the Court commissioner, if commissioner fee and PF is paid.*

*Call on 26.02.2024.*

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