

KABG410013782014



ORDER ON I.A. No.V:

The defendant has filed this I.A.No.5 U/Order 26 Rule 9 R/w Section 151 of CPC to appoint the Assistant Director of Land Records, Chikodi to measure and fix the boundaries as per the registered sale deed, dated 10-11-2010.

2) From the records, it appear that the plaintiffs' side has submitted no objection to I.A.No.5 on 19-02-2020.

3) I have heard the learned counsel for the defendant and also learned counsel for the plaintiffs.

4) The following points arise for the consideration:

P O I N T S:

1. Whether the I.A.No.5 filed by the defendant deserves to be allowed?
2. What order?

5) My answers to the above points are as under:

Point No.1:- In the Negative.

Point No.2:- As per final order for the, following:

REASONS:

6) Point No.1:- The learned counsel for the defendant has contended that, the plaintiff has filed the suit for permanent injunction and obtained temporary injunction order till disposal of the suit and his construction is upheld. The defendant has not encroached the suit land as alleged by the plaintiffs and as such he is affected by the order. If the court commissioner is appointed to measure his land, it will help the court in determining the suit. The plaintiff has submitted no objections. Hence, prayed to allow the I.A.No.5.

7) Contrary, as already stated herein before, the plaintiff's side has submitted no objection to allow the I.A.No.5.

8. I have perused the contents of affidavit, wherein the defendant denied that he has encroached the suit land and pleaded that, the plaintiffs have falsely alleged about the encroachment. For proper adjudication and to fix the boundaries of his land purchased, the appointment of Assistant Director of Land Records is necessary and the dispute will come to an end.

9. This being the contention, the plaintiff has filed this suit for permanent injunction by praying to restrain the defendant from constructing any type of structure over the suit property which is shown as open space. He has also filed I.A.No.1 and this court has allowed the I.A.No.1 and the defendant is restrained from putting any type of construction over the suit property etc till disposal of the suit. The records also show that, the plaintiff himself is examined as Pw-1 and got marked 23 documents. However, the Pw-1 has not cross examined. The records also show that, the evidence of defendant's side is not completed.

10. It is well settled principle of law that, the parties have to prove their contention by producing their own evidence and they cannot seek the assistance of the court to collect the evidence. To

mean, the party cannot be permitted to collect the evidence through the process of court. As already stated herein before, the evidence of defendant's side is not yet began. Even evidence of plaintiff's side i.e. cross examination is not completed.

11. It is bounded duty of the plaintiffs to prove the alleged facts and it is not the burden of the defendant. Whether the plaintiffs proved or not, that will be consider during the trial. Moreover, the defendant is restrained only from putting up construction over the suit land and not over his entire land. Therefore, the contention of defendant that due to the order on I.A.No.1, his construction is held up is not acceptable.

12. Though, the contention of defendant urged in the affidavit seems to be genuine, it is the burden of plaintiffs to prove their case and it is not on the defendant at initial stage. Since the evidence of defendant's side is not commenced yet, it may be opined that, the application at this juncture is premature. Therefore, it may be opined that, the I.A.No.5 deserves to be rejecte.

13. It is noticed that, the defendant has already filed I.A.No.3 for the similar relief and this court has

passed an order on 05-03-2015 rejecting the said application. As the applications are at premature stage, the defendant is not affected by these orders. After completion of evidence of both sides, the parties are at liberty to file such kind of application if required necessary. With these observations, Point No.1 is answered in Negative.

14) Point No.2: For the reasons stated on Point No.1, I proceed to pass the following;

ORDER:

The I.A.No.V filed by the defendant U/Order 26 Rule 9 R/w Section 151 of CPC is hereby rejected.

However, either party is at liberty to file such kind of application after completion of trial of the suit if required.

Further, the plaintiffs are directed to co-operate the Hon'ble Court in speedy disposal of the suit as it is an old one.

No order as to cost.

O.S.No.341 of 2014

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