

ORDER ON I.A. NO.VIII FILED BY PLAINTIFF
U/O. XXVI RULE 9 R/W. Sec.151 OF CPC.

The learned counsel for the plaintiff has filed IA No.VIII U/O. XXVI Rule 9 R/W. Sec.151 of CPC praying to appoint Town Panchayat Officer as Court commissioner for measurement of the suit property to ascertain the encroachment on the suit property in the interest of justice and equity.

The learned Counsel for the defendants have filed objections to IA No. VIII.

Heard and perused all the available materials on record. This is suit for permanent injunction. The proceedings have reached the stage of arguments. Now it is the contention of learned counsel for plaintiff that to measure the suit property to ascertain the encroachment on the suit property, it is necessary to appoint the Court commissioner. It is just & necessary to allow this application to ascertain the fact of physical possession of property and also to ascertain the encroachment made by defendants as alleged by appointing a Town Panchayat Officer to measure the suit property.

On the other hand learned counsel for defendants has filed objections and contended that the contents and allegations of the affidavit filed in support of the IA are all false, frivolous and baseless and it is not maintainable either in law or on facts. Further submitted that there

being no any prima facie evidence in the course of the trial, the appointment of commissioner is nothing but an effort to collect the evidence afresh. The application under the provision is not to enable either of the party to collect the evidence. Hence, the present application is not maintainable. Further, the matter is now posted for arguments, the plaintiff has anticipated an adverse result only to overcome the said situation and trying to collect the evidence which is forbidden one. Under these circumstances prays to reject the application in the interest of justice and equity.

I have perused the materials available on record. The plaintiff has filed this suit for the relief of permanent injunction. During the pendency of suit plaintiff amended the plaint and inserted the pleadings with respect to encroachment by the defendants during the pendency of suit and also added the prayer for mandatory injunction.

The plaintiff asserts that the defendants have illegally and high handedly encroached upon the suit property and constructed the building. Therefore, under such circumstances it is just and necessary to appoint Court commissioner to ascertain the fact of encroachment. If so, to ascertain the extent of encroachment of suit property. Hence, the objections are not sustainable and present application deserves to be allowed. But the proper authority to conduct the survey

would be the AEE PWD., and not the Town Panchayat Officer. With these observations, I proceed to pass the following;

ORDER

The IA No.VIII filed by the plaintiff U/O.XXVI Rule 9 R/W. Sec.151 of CPC is hereby partly allowed.

The AEE PWD, Kittur is hereby appointed as Court commissioner.

The Court Commissioner fee is fixed as Rs.5,000/-.

The plaintiff shall submit the required documents and fee to carry on the Commissioner work. Both parties shall file the memo of instructions if any. Hence, for steps.

Call on 02.07.2024.

21.06.2024

Civil Judge & JMFC., Kittur.