



**IN THE COURT OF THE CIVIL JUDGE & JMFC., AT
SANDUR**

PRESENT: *Smt. Shashikala.G, B.A., LLB.,
Civil Judge & JMFC, Sandur.*

Dated this 31st day of January 2022

O.S.No.02/2019.

PLAINTIFF	:	Sri. Verma Sunil Kumar (Represented by Sri.GM Advocate)
// Vs //		
DEFENDANTS	:	Sri. Raghu Reddy @ Dish Raghu and others (Represented by Sri. AVK., Advocate)
I.A.No.<u>IV</u>		
PETITIONER	:	Raghu Reddy @ Dish Raghu and others
// Vs //		
OPPONENT	:	Sri.Verma Sunil Kumar

ORDER ON I.A. NO. IV

The applicant/plaintiff has filed his application
U/o 26 rule 9 of CPC and prayed to appointing Court
commissioner Taluk Surveyor, Sandur as a court
commissioner to conducted the survey of the schedule

mentioned property and Sy No. 185A/1 measuring 1.15 acres situated at Kurekuppa Village and submitted a report with sketch.

2. In support of the application, plaintiff sworn to affidavit and stated that the plaintiffs filed a suit against him and other defendants for permanent injunction. The plaintiff case is that, the defendants are illegally constructed a building towards northerner side of the schedule property. That he have already filed detailed written statement, the Ayyappa Swamy devotees constructed a building in Sy No. 185A/1 measuring 1.15 acres situated at Kurekuppa village in Sandur Taluk. So, he has not at all constructed a building in the schedule mentioned property but the building is already constructed in Sy No. 185A/1 measuring 1.15 acres, so it is necessary for him to appoint a commissioner, Taluk surveyor to conducted a survey of the schedule mentioned property and Sy No. 185A/1 measuring 1.15 acres, so real truth will come out so whether the

building constructed in schedule mentioned property nor in Sy No. 185A/1 measuring 1.15 acres. If this petition is allowed no injury will be caused to other side, if the petition is not allowed legal injury will be caused to him and other defendants. Hence prayed to allow the application.

3. Per contra plaintiff has filed objection and contended that the application filed by the the defendants is false, vexatious and not maintainable under law. As such, the application is liable to be dismissed with exemplary costs. The plaintiff further submits that, the plaintiff filed the above suit for permanent injunction against the defendants to restrain them from not to interfere with the plaintiff's peaceful possession and enjoyment over the suit schedule property. The plaintiff not sought any other relief such as declaration, eviction and mandatory injunction. Therefore, the above suit of the plaintiff is only for permanent injunction against the defendants with respect to the suit schedule property. The

defendants have filed their detailed written statement and they have contended that, they have not interfered in to the suit schedule properties as the temple is situated in the land belongs to Pujari Thimmappa and Ramaswamy in Sy No. 185/A/1. After filling written statement, till today, the defendants have not filed a single documents before this court to show the authenticity of construction of temple and the documents belong to the land bearing Sy No. 185/A/1 claimed to be the lands of Pujari Thimmappa and Ramaswamy. Now the suit is posted for plaintiff's evidence. The defendants have to prove that, the land to be surveyed is belongs to Pujari Thimmappa and Ramaswamy before appointment of commissioner to conduct the survey of schedule mentioned property and Sy No. 185/A/1 measuring 1.15 acres situated at Kurekuppa village. Further, the defendants have not at all claimed any counter claim against the plaintiff and there is no relief/claim of mandatory injunction by both parties.

The issues in question in this suit will be resolved and decided only by oral evidence as well as documentary evidence. Hence, the appointment of commissioner to conduct the survey does not arise at all at this premature stage. The defendants want to suppress the material facts before this court and filed this unholy and untenable application to get the wrongful gain. The very intention of the defendants only to procrastinate the proceedings of the above case. This application is premature as the evidence is not commenced yet. If the application is allowed, it gives scope to collective evidence before leading both side evidence. There is a settled law that, after completion of both side evidence, if the court not comes to conclusion of proper adjudication of the relief claimed by the parties, then only the court could permit the parties to file application for appointment of commissioner for conduct the survey of the properties of the both parties. If the court allow this application, irreparable loss and injustice

will be cause to the plaintiff. Hence prayed to dismiss the application with cost.

4. Heard the arguments and perused the materials on record.

5. The points that arise for my consideration are:

1) ***Whether the IA No. IV to appoint commissioner to conducted the survey of the schedule mentioned property and Sy No. 185A/1 measuring 1.15 acres situated at Kurekuppa Village and file report deserves to be allowed?***

2) ***Point No. 2 : What order?***

6. My answer to the above points are

Point No. 1: In the Negative

**Point No. 2: As per the final order
for the following;**

REASONS

7. **Point No. 1:** At the outset, it is relevant to note that order 26 rule 9 empowers the court to appoint court commissioner for the purpose of local investigation to elucidate any matter in dispute or ascertaining any market value of any property etc. Such power can be exercised by the court judicially in deserving cases.

8. the plaintiff has filed this suit for permanent injunction against the defendants. Defendants by filing this application sought for appointment of court commissioner to conducted the survey of the schedule property and Sy No. 185A/1 and submit report. The plaintiff by filing objection to the present application has denied the same and contended the application is premature and not maintainable.

9. Admittedly the suit is one for bare injunction. After passing an order in IA No. II on same day, the defendants have filed this application for appointing the commissioner. I feel it appropriate to refer the judgment of Hon'ble High Court of Karnataka between Renuka V/s Thammanna and others reported in AIR 2007 KAR 133, wherein it is held that "commissioner cannot be appointed to collect evidence in support of a claim. After completion of evidence on both the sides, if it is found that there is ambiguity in the evidence adduced by the parties, then the court may appoint a commissioner for the purpose of

clarification of such ambiguity” The instant case is at pre-trial stage, which means evidence is not yet adduced and therefore the question of ambiguity in the evidence will not arise at this stage. So it is parties who have to prove their case by leading cogent evidence. If defendants contends the Ayyappa swamy devotees constructed a building in sy No. 185A/1 measuring 1.15 acres and they have not at all constructed a building in the schedule mentioned property then it is their duty to prove the same. The court cannot help them by appointing court commissioner at this stage as it will amount to collecting the evidence and it is not the duty of the court to collect the evidence for the parties. In the instant case, the evidence is not yet adduced by both the parties. Hence in view of dictum of Hon’ble High Court of Karnataka in above mentioned case and discussion, I answer point no. 1 in the Negative.

10. **Point No. 2**: In view of above discussion, I proceed to pass the following;

ORDER

The IA No.IV filed by the applicant/defendants U/o 26 rule 9 for appointing commissioner is hereby rejected.

SD/-

(Shashikala. G)
Civil Judge & JMFC.,
Sandur