

ORDERS ON I.A.NO.V

The defendant No.1 who is the General Manager, HRD Division, Legal Cell, JSW Steel Limited Tornagallu has filed this application under Order 26 Rule 9 (A) of CPC and prayed to appoint the Taluka surveyor, Sandur to make local inspection and survey the schedule land adjoining land belongs to their company.

In the accompanying affidavit, the defendant No.1 has contended that, on 30.08.2017 their company initiated earth leveling work in its allotted land of 3.64 acres to make use the said for intended railway project, but the plaintiff and her henchmen obstructed their company work and threatened its workmen, fearing the plaintiff and her henchmen may assault the workers, asked its workmen to stop the intended work, and apprehending that the plaintiff and her henchmen may try to assault the company officials and damage the survey equipment and prevent the complaint from using the allotted land, gave complaint to the PSI of Sandur police station on 18.08.2017 seeking the police protection. The plaintiff is unnecessarily obstructing the defendant No.1 company and thus their company is unable to carry on the railway project for which the land was acquired by the defendant No.3 and also their company is unable to use the allotted land for the intended purpose due to plaintiff's activities, and if the taluka surveyor, Sandur is appointed to survey the plaintiff schedule land and adjoining land belonging to the defendant No.1 company and marks the boundary, no prejudice would be caused to the plaintiff and on the other hand,

it will help the court in adjudicating the dispute in between the parties effectively and completely. Hence, prayed to allow their application.

The plaintiff has filed objections to the said application and contended that, she has filed this suit against the defendants for the relief of permanent injunction, restraining them from interfering and disturbing the possession and enjoyment of the suit property, hence, the defendant would not seek for appointment of taluka surveyor to mark the boundary, which is against the law and is not maintainable. She has further contended that, the defendant himself produced the sketch and other documents clearly speaks about the demarcation of the boundaries of the suit property in respect of entire survey No.209 and therefore, their own documents reveals that the survey conducted by the competent authority, if they have not satisfied the report, he may prefer appeal before the competent authority, but filing of instant application for appointment of taluka surveyor is not sustainable, and the land is situated in 18 Hulikunte, Sandur and entire 18 Hulikunte of Sandur lands are unsettlement of survey and process undertaken by the government for demarcation of the boundaries and therefore unless demarcation of the entire land in dispute question alleged for seeking for appoint the commissioner is not at all maintainable. Hence, on these among other grounds, the plaintiff prays to dismiss the application.

Heard both sides and perused the material available on record.

The point that arise for my consideration and determination are as under:

Whether the defendant No.1 has made out sufficient grounds to appoint the Taluka Surveyor to survey the petition schedule property as sought for under I.A.No.V?

My answer to the above point is in the **AFFIRMATIVE** for the following

REASONS

The plaintiff has fled this suit against the defendants for the relief of permanent injunction, restraining the defendant No.1 and 2 from interfering with the possession and enjoyment of the plaintiff over the suit property. In this case issues are not yet framed and evidence is not yet commenced. When the case is posted for written statement of defendant No.3, it is at this stage, the learned AGP has filed I.A.No.4 for strike out the defendant No.3 from this case and the counsel for defendant No.1 has filed I.A.No.5 for appointment of court commissioner to survey the land bearing survey No.73 (209) measuring 9.34 acres situated at No.18 Hulikunte village, Sandur taluka.

It is the allegation of the plaintiff that, she had purchased the suit property from one Smt.Indira Bai through a registered sale deed dated 02.06.2001 for valid consideration and since from the date of purchase, she is in possession and enjoyment of the said property and the KIADB authorities have acquired 3.64 acres of land and handed over to the defendant No.1 company, but the said defendant No.1 company is also trying to grab the

remaining 5.70 acres and trying to disturb the possession and enjoyment of the plaintiff over the said 5.70 acres of land.

On the other hand, it is the contention of the defendant No.1 that the said portion of 3.64 acres acquired by KIADB and handed over to their company, is part and parcel of an extent of 216.29 acres and the mutation was also effected in the name of JSW company, and when their company worker started the earth leveling work on 30.08.2017, the plaintiff and her henchmen obstructed them and hence, it is proper to make survey the land.

Order 26 Rule 9 provides that in any suit in which the court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute or of ascertaining the market value of any property, or the amount of any mesne profits or damages or annual net profits, the court may issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon to the court.

When the defendant No.1 has contended that, the entire extent of 216.29 acres which also includes the suit property and the said property was acquired by the KIADB and handed over to the defendant No.1 company and on the other hand, when the plaintiff has contended that only 3.64 acres has been acquired by the KIADB and remaining 5.70 acres is in her possession and enjoyment, it is proper to appoint a commissioner for survey and report. If the application is allowed, no prejudice would be caused to the plaintiff, on the other hand, the report of the commissioner would help the court to come to the proper

conclusion of the case. Hence, I answer the above point in the affirmative and proceed to pass the following

ORDER

The application filed by the defendant No.1 at I.A.No.V under Order 26 Rule 9 of CPC is hereby allowed.

The Taluka Surveyor, Sandur is hereby appointed as a court commissioner to make local inspection and survey the schedule land and the adjoining land belonging to M/s JSW Steel limited.

Both the parties are directed to file their memo of instructions immediately.

The fees of the court commissioner is fixed at Rs. 1,500/- and the defendant No.1 is hereby directed to deposit the said amount in court immediately.

The office is hereby directed to issue commission warrant along with the particulars of schedule etc immediately.

Further the commissioner is hereby directed to submit his report along with sketch within 30 days.

(Dictated to the Stenographer, typed by him directly on the computer, corrected by me and then pronounced in the open court on this 23rd day of January,2019)

(MANJUNATHA.R.)
Civil Judge & JMFC. Sandur

ORDERS ON I.A.NO.IV

The present application is filed by the learned Assistant Government Pleader on behalf of defendant No.3 under Order I Rule 10 and under section 80 (c) read with Section 151 of CPC and prayed to strike out the name of defendant No.3 from the suit.

In the accompanying affidavit, the land acquisition officer, KIADB, Davanagere has contended that, the plaintiff has filed this present suit without claiming any relief against him, and the plaintiff ought to have implead the Deputy Commissioner or Chief Secretary of the State, who are representing the State, but he is the Special Land Acquisition Officer, but not representing the State, and the plaintiff has not complied the mandatory provisions of Section 80 (c) of CPC, and the plaintiff has not claimed any relief against him, he is not property party to the suit and if the application is allowed, no loss or hardship would be caused to the plaintiff. Hence, prayed to dismiss the application.

The plaintiff has not filed any objections to the said application.

On perusal of the relief column in the plaint, the plaintiff has not claimed any relief against the defendant No.3. The defendant No.3 has clearly stated that, he is not representing the state, but the plaintiff ought to have made the Deputy Commissioner or the Chief Secretary to State as parties to the suit, as they are representing the State. The plaintiff has not filed any objections to the said application in spite of granting

sufficient time and opportunity. Hence, I proceed to pass the following

ORDER

The application filed by the defendant No.1 under Order1 Rule 10 and Section 80 (c) read with 151 of CPC is hereby allowed.

The defendant No.3 is discharged from this suit and in consequence whereof, the suit of the plaintiff against the defendant No.3 is dismissed.

No order as to costs.

(Dictated to the Stenographer, typed by him directly on the computer, corrected by me and then pronounced in the open court on this 23rd day of January,2019)

(MANJUNATHA.R.)
Civil Judge and JMFC. Sandur