

IN THE COURT OF THE ADDL. CIVIL JUDGE & JMFC**MUDHOL.****Present :**

Sri Ajit Devaramani,
B.Sc., L.L.B.
Addl. Civil Judge & JMFC Mudhol

ON TODAY THIS THE 25th DAY OF AUGUST - 2020**O.S.No: 266/2014**

1. Ramachandra S/o Venkappa Jeeragal
Plaintiff/s

- v/s -

1. Ningappa S/o Bhimappa Badiger

IA.No.3

1. Ramachandra S/o Venkappa Jeeragal,
Age: 74 years, Occ: Serviceman,
R/o. Badnur, Tq: Mudhol.

...Applicant/Plaintiff**- v/s -**

1. Ningappa S/o Bhimappa Badiger,
Age: 44 years, Occ: Carpenter,
R/o. Badnur, Tq: Mudhol.

..Opponent/Defendant

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Applicant/plaintiff by Sri PMV, advocate
Opponent/defendant by Sri MBT/GSP, advocates

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: : ORDER ON I.A-3 : :

1. Applicant/plaintiff has filed this I.A. U/s.26 Rule 9 R/w Section 151 of CPC seeking to appoint Executive Officer, Taluka Panchayath, Mudhol, Dist: Bagalkot as Court Commissioner to make local investigation with the aid of Taluka Surveyor.
2. In the affidavit annexed to the IA-3, plaintiff has contended that he is owner of suit upon space. He was working in Indian Military as Radio Mechanic from 1964 to 1981. After his retirement as per order of Deputy Commissioner, Bagalkot resolution passed by Gram Panchayat, Bantanur in meeting No.13 and resolution dated 28.07.2007, the suit open space was granted in favour of him and accordingly his name was mutated in Gram Panchayat record of suit open space and accordingly he was in actual possession and enjoyment of suit open space. Defendant was lease holder of 20 x 20 feet open space situated towards western side of suit open space and the said open space was previously standing in the name of Premavva Yengi. During 2nd week of November 2011 defendant along with his brother-Shivappa have started to dig plinth in the open space. Therefore plaintiff has filed complaint before PSI, Lokapur on 28.11.2011 and he also approached Deputy Commissioner, Bagalkot and Deputy Director of Sainik Kalyan and Punarvasati Department. In-spite of all efforts made by him, no officer has taken any legal action against defendant.

But the defendant has not handed over vacant possession of suit open space to plaintiff. Already evidence of both parties are completed in this case and at this stage it is necessary to appoint the Court Commissioner in order to elucidate the matter completely and judicially. Hence prays to allow the interim application.

3. Defendant has filed objections, in the objections defendant has contended that application is not maintainable either in law or on facts. Further contended that already both parties have adduced their evidence in this case. Now the plaintiff has realized that he will fail in the case. Therefore just to drag-on the case he has filed this application and there is no need to appoint Court Commissioner for local investigation. Therefore prays to reject the application.
4. On the basis of above pleadings the following points arise for my consideration;

POINTS

- 1:** Whether applicant/plaintiff has made-out grounds to appoint court commissioner for local investigation?
- 2:** What order?
5. I have heard the arguments of both parties and perused the materials available on record.
6. My answers to the above points are as under:-

Point No.1 : In the Affirmative;

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

:: R E A S O N S ::

7. **Point No.1:-** Plaintiff has filed this suit for possession of the suit property alleging that defendant has illegally encroached the suit open space.
8. The applicant/plaintiff has contended that he is owner of suit open space. As per order of Deputy Commissioner, Bagalkot resolution passed by Gram Panchayat, Bantanur in meeting No.13 and resolution dated 28.07.2007, the suit open space was granted in favour of him and accordingly his name was mutated in Gram Panchayat record of suit open space and accordingly he was in actual possession and enjoyment of suit open space. Defendant was lease holder of 20 x 20 feet open space situated towards western side of suit open space and the said open space was previously standing in the name of Premavva Yengi. During 2nd week of November 2011 defendant along with his brother-Shivappa have started to dig plinth in the open space. Therefore plaintiff has filed complaint before PSI, Lokapur on 28.11.2011 and he also approached Deputy Commissioner, Bagalkot and Deputy Director of Sainik Kalyan and Punarvasati Department. In spite of all efforts made by him, no officer has taken any legal action against defendant. But the defendant has not handed over vacant possession of suit open space to plaintiff. Already evidence of both parties are completed in this case and at this stage it is necessary to

appoint the Court Commissioner in order to elucidate the matter completely and judicially.

9. On the other hand defendant has argued that already both the parties have adduced their side evidence, now plaintiff has realized that he may loose the case and just to drag-on the suit, he has filed this application.
10. Having heard the learned counsel for both parties, it is undisputed fact that plaintiff has filed this suit for possession alleging that defendant has illegally encroached the suit open space. On perusal of records it clearly shows that both the parties have adduced their oral and documentary evidence relating to the rival claims that all put-forth in the suit. The plaintiff contends that defendant has encroached the suit open space belonging to him. On perusal of evidence there are ambiguities with regard to the measurement of the properties. It is an allegation of the plaintiff that defendant has encroached suit open space, for proper adjudication of the case at this stage it is necessary to appoint Court Commissioner for local investigation. On the other hand defendant is having opportunity to challenge the Court Commissioner's report. Therefore, at this stage plaintiff/applicant has made-out grounds to allow the application. Hence I answer Point No-1 in the Affirmative.

11. **POINT No.2:-** In view of the discussion made above and findings given on Point No.1, I proceed to pass the following;

: O R D E R :

I.A.No.3 filed by the applicant/plaintiff U/o. 26 Rule 9 R/w Section 151 of CPC is hereby allowed.

Executive Officer, Taluka Panchayat, Mudhol, Dist: Bagalkot is hereby appointed as Court Commissioner and Taluka Surveyor is directed to assist the Court Commissioner.

Both parties are directed to file their memo of instructions and the Court Commissioner is directed to make for local investigation of the suit open space as per memo of instructions filed by both the parties and submit the report to this court on the next date of hearing.

(Dictated to stenographer, transcribed by him, script corrected, signed and then pronounced in the open court by me on this the **25th DAY OF AUGUST - 2020**)

Sd/-
(Ajit Devaramani)
Addl. Civil Judge & JMFC Mudhol