

IN THE COURT OF ADDL. CIVIL JUDGE AND JMFC, MUDHOL.

O.S.No 266/2014

**Orders on Court Commissioners Report dated:
27/03/2024**

The plaintiff has filed suit against the defendant seeking possession of open space described in plaint Para No 3.

The defendant filed his written statement denying the plaint averments.

As per orders dated 25/08/2020 on I.A No III filed by plaintiff U/Sec. 26 Rule 9 of CPC this court appointed Executive Officer Taluk Panchayat Mudhol as Court Commissioner and directed him to conduct local investigation of the suit open space with the aid of Taluka Surveyor as per the memo of instructions filed by both parties. Thereafter, the further proceedings of the suit were stayed by Hon'ble High Court of Karnataka in WP No 147758/2020.

This court received copy of orders passed by Hon'ble High Court of Karnataka in WP No 147758/2020.

Wherein the Hon'ble High Court dismissed the writ petition filed by present defendant challenging the order dated 25/08/2020. Further, in view of the disposal of the said WP this court by its order dated 30/01/2023 issued

court commissioner warrant and directed him to make local investigation of suit open space.

On 04/04/2024 this court received court commissioners report and counsel for plaintiff files objections to said report contending that the court commissioner has not visited the suit site along with Taluka Surveyor and not made any local investigation as per the order of this court and also he has not prepared PT sheet by measuring the suit site. Further contended that the court commissioner inspite of making local investigation has adjudicated the title of the property of plaintiff and defendant. On these and other grounds prays to set aside the commissioners report and prays to appoint a fresh court commissioner and issue warrant.

I have perused the entire records on hand. Also perused report submitted by the court commissioner. On perusal of report no where it is mentioned that before conducting inspection of suit open space the court commissioner has not issued notices to either parties of the suit. Further, the court commissioner has not conducted his work by following proper procedure, instead he has mentioned irrelevant things which are not within his authority. Hence considering the said report, prima facia it can be seen that the report submitted by court commissioner prepared by not following the mandate

procedure under such circumstances such report cannot be considered for further trail as it is not clear. Hence, the court commissioners report submitted by Executive Officer of Taluka Panchayat Mudhol is hereby rejected.

Accordingly, the Executive Officer Taluka Panchayat Mudhol, once again appointed as court commissioner.

The court commissioner is directed to make local investigation of the suit open space with the aid of Taluka Surveyor Mudhol as per the memo of instructions filed by both the parties and file his report.

Issue Commissioner Warrant, if necessary fee, documents and memo of instructions filed by both the parties.

Further the plaintiff is directed to deposit Rs. 2,000/- towards court commissioners fee.

For memo of instructions.

Call on: 16/07/2024.

Sd/-
Addl. Civil Judge & J.M.F.C.,
Mudhol