

**IN THE COURT OF ADDL. CIVIL JUDGE & J.M.F.C,
MUDHOL, AT: MUDHOL.**

PRESENT:

SMT. SARASWATI HOTAKAR,

B.A., LL.M.,
Addl. Civil Judge & JMFC., Mudhol.

Dated this the 13th February 2024

O.S.No.132/2022

Plaintiff:

Somappa S/o. Ramappa Yadawad.

-V/s-

Defendant:

Tammanna S/o. Ramappa Yadawad.

I.A.No.II

Applicant/:

Defendant:

- 1) Tammanna S/o. Ramappa Yadawad.
Age: 65 years, Occ: Agriculture,
R/o. Metagudda, Tal: Mudhol.

-V/s-

Opponent/:

Plaintiff:

- 1) Somappa S/o. Ramappa Yadawad.
Age: 55 years, Occ: Household work,
R/o. Metagudda, Tal: Mudhol.
Dist.Bagalkot.

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Applicant: by Sri.PAP, Advocate

Opponent: by Sri.ASY, Advocate

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Order on I.A.No.II filed U/Or.26 R.9
R/w Sec. 151 of CPC

The applicant/defendant has filed this application seeking to appoint Advocate Court Commissioner to inspect and submit report with respect to the suit proeprty bearing R.S.No.124/1 measuirng 10 acres 30 guntas of paintiff and defendants.

2. In the affidavit annexed to the application the applicant/defendant has contended that, plaintiff has filed suit against him for the relief of declaration and permanent injunction with respect to suit property and he has denied entire contents of plaint in his written statement. That there is no such road in existence as shown in the hand sketch of the plaintiff on the south side on East-West direction. He has dug bore well in the year 2000 for irrigation his land on the side of South towards East dug bore wells and took electric connection and by constructing house residing with his family. There after he got dug two more bore wells to irrigate his lands and except bore wells there is no other source of water to irrigate the lands and there is a road for the plaintiff to reach Mudhol Yadawad main road towards

defendant on the East-West direction and except that there is no other way as contended by plaintiff. By suppressing these facts plaintiff has filed false suit against the defendant. So it is necessary to appoint a Court Commissioner to bring true facts before the court which will help the court to decide the matter. On these grounds prayed to allow the application.

3. The plaintiff has filed objections to I.A.No.2 contending that I.A.No.2 filed by the defendant is not maintainable either in law or on facts. A commissioner cannot be appointed for collection of evidence. Further Tahasildar Mudhol after due enquiry and after local inspection issued a certificate on 03-01-2023 stating that there is a road on the southern side of the land of defendant to approach the land of plaintiff. Further it is for the plaintiff to establish his case, for his purpose plaintiff has produced hand sketch map and photographs showing the existence of suit road. Further Commissioner cannot be appointed before recording evidence under the circumstances there is no need to appoint the Court Commissioner as sought by the defendant. In spite of it the defendant has filed present application just to cause loss and harass the plaintiff. Hence

commissioner cannot be appointed a sprayed by defendant.
On these grounds prayed to dismiss the application.

4. On the above pleadings, following points that arise for my consideration:

:POINTS:

- 1. *Whether the defendant has made out sufficient grounds to appoint Advocate Court Commissioner for executing the work as prayed for?***
- 2. *What order?***

5. Heard the arguments of both sides.

6. I have perused the pleadings, application, objections and documents on record. I have also Perused the citations produced by both the parties.

7. On careful perusal of records, my findings to the above points are;

Point No. 1: In the **Negative,**

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

: R E A S O N S :

8. **POINT NO.1** :- The suit of the plaintiff is for the relief of declaration that he is having right of easement over the suit XY way and to restrain the defendant from obstructing the plaintiff from use and enjoyment of suit way for his

peaceful possession and enjoyment of the suit way. That towards South of defendants property i.e. CDEF abutting to it there exists a XY road lying East-West 12 feet in width. Plaintiff and his ancestors were using the said road since from their ancestors without any obstruction from anybody either defendant or his father or their ancestors at any time. Defendant is obstructing the use of said XY road by plaintiff for transporting the sugarcane to factory and other agricultural produce and if he is restrained he would suffer irreparable loss.

On the contrary it is the contention of defendant is that there is no mention with respect to suit way in the apsat watni patra. Only with intention to harass the defendant plaintiff has filed present suit. The defendant to irrigate his land has dug a bore well in the year 2000 and took KEB supply and installed one TC on South bank of Eastern side and got constructed a house and living with his family. Thereafter he has dug another two bore wells and irrigating his land and there is no other source of water to the land of the defendant. The defendant has shown the location of suit land in his hand sketch map. Property of plaintiff shown by letters IJKL and defendants property is

shown by letters IJMN house property shown by letter H and Well and TC are shown by letters W & T respectively. Plaintiff use to go from his land towards land of defendant on North side towards East-West and then reach the Main road on Mudhol-Yadawad road and he is using the said road. This being so, with intention to harass the defendant and cause monetary loss and with intention extract money from defendant filed this false suit and there is no such road as shown by plaintiff in his hand sketch map. The defendant so many years back had dug three bore wells and installed TC and constructed house and cattle shed by investing huge amount. Except the bore wells there is no other source of water to the defendant and if the were destroyed the defendant will be put to irreparable loss.

9. Now the case is at initial stage, defendant intended to appointing of Advocate Court Commissioner to inspect and submit report with regard to the position of the suit property. As rightly contended by the plaintiff in his objections before recording of evidence appointment of court commissioner cannot be permitted in the case on hand. If the application is allowed it is nothing but giving right to the defendant to collect evidence without taking any

stress to prove his defence. The party has to stand on his own and not seek the assistance of court to get the relief. Both the parties have to put their contentions and documents in support of their claim and if necessary to decide the matter court find it is necessary to appoint court commissioner at that time court issue directions. But it is nothing but premature to grant the relief sought by the defendant. Hence it is held that the defendant has failed to make out good and sufficient grounds to allow appointment of advocate court commissioner. Accordingly I answer **Point No.1 in the negative.**

10. **Point No.2 :-** In view of my findings on points No.1, I proceed to pass the following:-

:: ORDER ::

I.A.No.II filed by the Defendant under Order XXVI Rule 9 R/w Sec. 151 of the CPC is hereby **rejected.**

No order as to costs.

(Dictated to the Stenographer directly on to the computer typed by him, transcript revised, corrected and then pronounced by me in the open court this the day of 13th February 2024)

Sd/-
(Smt.Saraswati Hotakar)
Addl. Civil Judge & JMFC., Mudhol.