

IN THE COURT OF PRL. CIVIL JUDGE AND JMFC, ANEKAL.

28th day of October 2024

PRESENT: Sri. Shankarareddy.D.V., L.L.B., PGD in IR & PM.,
Prl. Civil Judge and JMFC, Anekal.

OS.No.478/2017

Plaintiff : B.V Gopal Reddy,
V/s.

Defendant : Munireddy & another,

IA No.I

Defendant/Applicant : Munireddy & another,

V/s.

Plaintiff/Opponent :B.V Gopal Reddy,

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ORDERS ON IA No.I

The defendants have filed the present application U/o.XXVI Rule 9 R/w Sec. 151 of CPC praying to appoint the Taluk Surveyar as Court Commissioner for measuring the property bearing Sy.No.91/2 and fixation of the boundaries of the same and submit the report with sketch in that regard.

2. In the affidavit annexed to the present application, defendant No.2 stated that towards northern-side of suit property defendants property bearing Sy.No.91/2 measuring 03 guntas is

in existence and defendants are in possession of the same. However, the plaintiff by filing present suit in respect of suit schedule property, he has shown the boundary towards northern side of suit schedule property is public road instead of showing the property of defendants ie., property bearing Sy. No.91/2 measuring 03 guntas with an intention to knock of the said property. Hence, it is necessary to appoint the court commissioner to identify the defendants property and fixation of the boundaries after measurement and he further contends that if the court commissioner is not appointed, it is not possible to elicit the truth and same may cause injustice to the defendants. Accordingly, among these and other grounds defendants prayed to allow the present application.

3. On the other hand, the plaintiff in his objection denied the averments of the present application and contended that towards northern-side side of suit schedule property defendants property is not at all existence and he further contends that the registered sale deed dated 30-04-1980 clearly go to show that towards northern side of suit schedule property public road. In the circumstance, it is not at all necessary to appoint the court

commissioner for measuring the alleged defendants property. It is further contended that in the suit for injunction appointment of court commissioner not at all sustainable. Accordingly, plaintiff prayed to dismiss the present application with cost.

4. Having heard both-side and on perusal of material available on record, the following points arise for consideration;

1. Whether the defendants have made out valid grounds to allow the present application.?
2. What order?

5. On appreciation of material available on record, the above points are answered as under;

POINT No.1	:- In the Affirmative,
POINT No.2	:- As per final order, for the following ;

REASONS

6. **Point No.1:-** The real controversy between the parties to the *lis* is, according to the plaintiff towards northern-side of suit schedule property public road is in existence. On the other hand, according to the defendants towards northern-side of suit schedule property, defendants property ie., property bearing Sy.No.91/2 measuring 03 guntas is in existence and after their property public road is in existence ie., in between road and suit schedule property

defendants property bearing Sy.No.91/2 measuring 03 guntas is in existence. In the circumstance, whether the boundary as shown by the plaintiff in respect of suit schedule property towards northern-side is correct or not to be decided factor in this case and to decide the same effectively taluka surveyor to be appointed as court commissioner for aforesaid purpose. Otherwise, same cannot be traced or elicited any amount of other evidence may be produced or produced by the both parties to the *lis*. Therefore, this court of the view that the reasons urged by the defendants to allow the present application are justifiable and the averments of objection of plaintiff un-acceptable. Now, it is relevant to refer the case of **Shadaksharappa Vs Kumari Vijayalaxmi and others- 2023 SCC Online Kar 53**, wherein our Hon'ble High Court in para No.24 observed as under;

Having examined the provisions referred to above and given the fact that Order XXVI of the Code of Civil Procedure is often invoked in the trial court, this court is of the view, broadly speaking in the following cases, the appointment of an appropriate Commissioner as provided under Order XXVI of the Code is desirable.

- (i) The dispute relating to the easement of air, light, pathway, road, watercourse, etc.
- (ii) The dispute relating to the boundary, encroachment;
- (iii) The dispute relating to forgery;

(iv) The dispute relating to the existence or otherwise of a stream, pond, drainage, watercourse, road, pathway, pollution, or nuisance.

In view of the aforesaid dictum, it is clear that in the suits relating to boundary disputes the court commissioner has to be appointed to elicit the truth. In the present case, as pointed above boundary in respect of suit property towards northern-side is dispute between the both parties. Therefore, the application filed by the defendants for appointment of commissioner is needs be allowed. Thus, the aforesaid view of Hon'ble High Court of Karnataka supports the view of this court. Accordingly, this court opines that defendants have made out valid grounds to allow the present application. With this discussion, point No.1 is answered in the Affirmative.

7. Point No.2: For the reasons assigned in point No.1, this court proceeds to pass the following:-

ORDER

IA No.I filed by the plaintiff under Order XXVI Rule 9 R/w Sec.151 of CPC is hereby allowed.

The Taluka Surveyor of Anekal Taluk, Anekal is hereby appointed as Court Commissioner for measurement of property bearing Sy.No.92/3,

measuring 03 guntas and fixation of the boundaries of the same and submit report with sketch thereof.

The Court Commissioner fee is fixed Rs.2000/- and same shall be deposited by the defendants.

The Commissioner shall effect the survey and submit report within 60 days from the date of receipt of warrant.

Issue Commissioner warrant with requisite documents, if PF paid.

(Directly dictated to steno, corrected, signed and pronounced by me in Open Court on this the 28th day of October 2024.)

(Sri. Shankarareddy D.V)
Prl. Civil Judge & JMFC., Anekal