

**IN THE COURT OF THE II ADDL., CIVIL JUDGE AND J.M.F.C.,
AT DODDABALLAPURA**

PRESENT: Sushma. M. B.A., LL.B.,
II Addl., Civil Judge & JMFC,
Doddaballapura.

Dated: This the 8th day of August 2023

O.S. No.198/2021

Plaintiff/s:

Sri. Rajanna,
S/o Late. Chikkabyrappa,
Aged about 58 years,
R/at: Seegehalli Village,
Tubugere Hobli,
Doddaballapura Taluk,
Bangalore Rural District.

(Repd. By Sri. S.M., Advocate)

V/s.

Defendants:

1. Sri. Munegowdappa,
S/o Late. Subbarayappa,
Aged about 75 years,

2. Smt. Yashodamma,
W/o Late. Narayanaswamy,
Aged about 51 years,

3. Sri. Nagaraju,
S/o Late. Ramakrishnappa,
Aged about 42 years,
All are R/at: Seegehalli Village,
Tubugere Hobli,
Doddaballapura Taluk,
Bangalore Rural District.

(D.1 and D.2 Ex-Parte)

(D.3 Repd. By Sri. S.B., Advocate)

ORDERS ON 26 RULE 9 R/W SEC., 151 OF C.P.C.

The Present application has been filed by the learned counsel for plaintiff under Order XXVI Rule 9 R/w 151 of CPC to appointment of Court Commissioner/ Competent Surveyor for local investigation of the property and in order to identify the property of the plaintiff and submit the report.

2. In support of the said application the plaintiff has filed affidavit contending that, he has filed the said suit for the relief of permanent injunction against the defendants. It is the case of the plaintiff that, the plaintiff is the absolute owner of the pliant schedule property. The defendants have interfered with his peaceful possession of the plaint schedule property. The defendant denying the plaint allegations and caliming the itnerfer with his property. It is further submitted that, to locate and demarcate the encroached portion in the plaint schedule property the survey of the survey number is necessary. It would be done by a surveyor only. To identify the suit survey number, the intefere with his property which is actual belongs, it is necessary to prepare a revenue sketch by a surveyor and report. The oral evdience of the parties is not sufficient to clinch the issues. The report that may be submitted by a court commissioner (Surveyor) will assist the Court to come to a correct conclusion and render justice to the parties and hence prays to allow the application.

3. The learned counsel for the defendants have filed objection and has contended that, the I.A. filed by the plaintiff for the appointment of Court Commissioner is not maintainable either in law or on facts. It is the case of the defendant No.3 that, as could be seen from the averments made in the affidavit in support of the I.A., the plaintiff has not made any grounds to consider his

application and the application filed by the plaintiff only to drag the proceedings of the case and to harass the defendants. The defendant No.3 further submitted that, the plaintiff has deliberately and intentionally suppressed the facts that the schedule property is the ancestral and joint family of the family which includes the plaintiff and defendant No.3. It is further submitted that, the plaintiff has not stated where his property in the plaint and the plaintiff mentioned wrong boundaries in the plaint schedule and hence prayed to dismiss the application.

4. Heard the counsel for plaintiff and defendants.

5. This is a suit for permanent injunction filed by the plaintiff restraining the defendant from interfering with the suit property. The plaintiff has stated that he is the absolute owner of the suit schedule property the defendants are interfering with his peaceful possession and enjoyment over suit schedule property. He has also stated that defendants are trying to construct cattle shed in order to dispossess way of digging the trenches and they are trying to encroach the suit property by way of construction. In support of plaint averments, the plaintiffs have produced revenue documents like survey sketch and map and other relevant documents pertaining to revenue department. In my opinion also, the said documents are enough to prove their case on hand. It is not understood as to why the plaintiffs have filed this application to appoint the Taluk Surveyor to survey and demarcate the suit property. The prayer sought by the plaintiffs cannot be allowed. In my opinion, the Taluk Surveyor need not submit the report. Because, there are map and survey documents on record. The plaintiff has

claimed that the defendants are trying to encroach the suit schedule property but they have not encroached. It is their burden to prove as pleaded. For that purpose, plaintiff cannot take assistance of the Taluk Surveyor or any other person. In my opinion, the oral evidence and documentary evidence on record is sufficient to the plaintiff to substantiate their version. The plaintiff has not stated that even after completion of evidence of both parties, if there is ambiguity in the evidence and due to the said ambiguity, the dispute between the parties cannot be adjudicated fairly. Therefore, I hold that the application is liable to be dismissed. To appoint commissioner at this stage, it is necessary to the plaintiff to show that there is ambiguity in existence on the evidence of both parties and there may not be proper adjudication. Yet both side evidence has not been completed. Therefore, the objections filed by the defendant no.3 is sustainable and the application filed by the plaintiff is not maintainable. Therefore, I answer Point No.1 in the Negative.

6. **Point No. 2:-** As per the above discussion, I pass the following :

ORDER

I.A.No.V filed by the plaintiffs U/o.26 Rule 9 R/w 94(e) of CPC is hereby dismissed with cost of Rs.200/-

-Sd-

**II Addl. Civil Judge & J.M.F.C
Doddaballapura.**