

KACM200002752019



IN THE COURT OF SENIOR CIVIL JUDGE,
AT: KADUR

Present:- Sri. IRFAN.

B.A., LL.B.,

Senior Civil Judge & JMFC,
Kadur, Chikkamagaluru District.

Dated: this the 7th August - 2024

O.S. No.48/2019

Plaintiff:-

Sri. B.C. Somaprasanna,
S/o Late Chandrappa,
Aged about 52 years,
Government Employee,
R/o Gowrapura Village,
Ajjampura Hobli,
Ajjampura Taluk,
Chikkamagaluru District.

(By: Sri. S.N. Girish, Advocate)

V/s

Defendant:-

Sri. Lakshman,
S/o Late Govindappa,
Aged about 30 years,
Agriculturist,

R/o Venkateshwara Nagara,
Kadur Town, Kadur Taluk,
Chikkamagaluru District.

(By: Sri. K.A. Shanthappa / Sri. D.N.Prakash Advocates).

RANK OF THE PARTIES ON I.A.NO.IV

Applicant/
plaintiff : Sri. B.C. Somaprasanna.

V/s
Opponent/
Defendant : Sri. Lakshmana.

i	<i>Provision under which the application is filed</i>	<i>U/O 26 Rule 9 R/w Sec.151 of CPC</i>
ii	<i>Relief sought for</i>	<i>Appointment of Court Commissioner</i>
iii	<i>The date on which the application is filed</i>	<i>22.03.2021</i>
iv	<i>Number of the application</i>	<i>04</i>
v	<i>The date on which the objections are filed by different opponent</i>	<i>28.03.2022.</i>
vi	<i>The date on which the orders were passed on the said application</i>	<i>07.08.2024.</i>

STAGE: Trial concluded / Argument.

ORDERS ON I.A.IV

This interim application has been filed by the plaintiff under Order XXVI Rule 9 of CPC seeking to

appoint Taluk Surveyor of Kadur as Court Commissioner for local investigation with the assistance of Revenue Inspector or Civil Engineer of Town Municipality, Kadur to measure the suit schedule property

2. This application is accompanied by an affidavit filed by the plaintiff. The gist of the application averment is that this suit has been instituted seeking for the relief of declaration of plaintiff's title over the suit 'A' schedule property and for delivery vacant possession of encroached portion described as suit 'B' schedule property from the defendant. It is the specific contention of the plaintiff that he is the absolute owner of suit 'A' schedule property and the same has been converted from agricultural purpose to non-agricultural purpose in the year 1987-88 and out of the said property an extent of 1 acre 14 guntas for forming the residential sites by left the space of 07 guntas of land towards eastern side and another 07 guntas of land is left towards the western side. It is the specific contention of the plaintiff that on 03.03.2019 the defendant has abruptly encroached upon a portion of suit 'A' schedule property which is described as suit 'B'

schedule property. Hence, it is just and necessary to appoint Taluk Surveyor as court commissioner.

3. This application has been resisted by the defendant vide detailed objections asserting that there is no substance in the application for the appointment of court commissioner. Already oral and documentary evidence is made available on record. There is a special mechanism for the measurement of properties and the plaintiff has not exhausted the said remedy and the present application amounts to collection of evidence. There is no property available in favour of plaintiff as described in the plaint. The suit itself is not maintainable and accordingly, sought to dismiss the application.

4. Heard both side. Perused the case records.

5. The points for consideration are as follows:

1. Whether it is essential to appoint the Taluk Surveyor as court commissioner to measure the disputed property to note the alleged encroachment, if any?
2. *What order ?*

6. The above points are answered as follows:

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** :- This suit is for the declaration of plaintiff's title over the suit schedule property and also for the possession of 'B' schedule property which is alleged to have been encroached by the defendant. The defendant has denied the allegation of encroachment. It is a matter of record that respective parties have lead their oral and documentary evidence and when the matter was posted for arguments on merits, the present application has been filed seeking for the appointment of court commissioner. There is a specific allegation of encroachment which has been denied by the defendant. Under such circumstances, when there is a question of encroachment, it would be proper to appoint a court commissioner to ascertain the factual aspects. The report of the commissioner would certainly assist the court to arrive at a just conclusion of the case. It is needless to mention that the report of court commissioner is only a piece of evidence and it is for the respective parties to establish their specific

contentions. As there is a specific allegation of encroachment, the present application deserves to be allowed. Accordingly, **the point under consideration is answered in the Affirmative.**

8. **Point No.2:** In view of findings on the foregoing point, the following:

ORDER

I.A dated 22.03.2021 filed by the plaintiff U/o XXVI Rule 9 R/w Sec.151 of CPC is allowed.

Taluk Surveyor, attached to ADLR Office, Kadur or to his order any subordinate acquainted with the survey work is hereby appointed as Court Commissioner to measure the suit 'A' schedule property and to note encroachment if any made therein by the defendant, which is described by the plaintiff as 'B' schedule property.

The Commissioner's fee is fixed at Rs.3,000/-.

Both the parties are directed to file their memo of instructions within 7 days in the Office.

The learned Court Commissioner is directed to measure the disputed properties with reference to the respective pleadings, relevant documents and to report, if there is any encroachment as contended by the plaintiffs by answering the memo of instructions filed by respective parties. If necessary, the learned court commissioner is entitled to take assistance of Revenue Inspector or Civil Engineer of Town Municipality Council, Kadur.

The learned Court Commissioner shall fix the date for holding the spot inspection with prior notice to the

respective parties and to conduct necessary work as ordered above and to file a detailed report along with sketch.

The Commissioner's Report shall be executed within one month of receipt and if any further extension of time found to be required, the learned Court Commissioner shall file a status report and seek for further directions.

Issue intimation to the Revenue Inspector or Civil Engineer of Town Municipality Council, Kadur to assist if they are summoned by the learned court commissioner.

(Dictated to the Stenographer on computer, corrected, initialed and then pronounced by me in open Court on this the 7th day of August-2024)

Sd/-
(IRFAN)
Senior Civil Judge,
Kadur.