

ORDERS ON IA NO.7

The plaintiff has filed an application U/o 26 rule 9 of C.P.C. for seeking relief of appoint of Court Commissioner for the purpose of local investigation of the properties of plaintiff and defendants.

2. In the affidavit which is enclosed to application, the plaintiff has stated that he filed suit against the defendants for the relief of declaration and possession on the ground the defendants have encroached the B schedule property which is part and parcel of plaintiff A schedule property. On the other hand the defendants denied the case of the plaintiff Therefore, the appointment of Commissioner his very necessary to ascertain the properties of the both parties.

3. On the other hand the defendant No.7 filed objection to the application under order 26 Rule 9 of CPC, in the objection statement he has stated that the application filed by the plaintiff is not maintainable both in law or an facts. Further it is stated that, the defendant No.7 never encroached the property of plaintiff as alleged stated in the plaint. Therefore, the present application is not maintainable. Accordingly prays for reject the application.

4. Heard arguments on both sides.

5. Perused records. The plaintiff filed the suit against the defendants for the relief of declaration of title, recovery of possession and permanent injunction with respect to suit schedule properties. The plaintiff made allegations against the defendant in the month of January 2015 the defendant No.7 has encroached the B schedule property. On the other hand the defendant denied the same and they have disputed identity of the schedule property as well as the defendants property. More over in course of argument the learned counsel for the defendant has stated that he has no objection to appoint the commissioner to identity of the schedule property as well as defendants property. Further the plaintiff has taken contention that the defendant No.7 has encroached the property of plaintiff. It is well settled that ***“The suit is one for possession and injunction. The plaintiffs claim, the defendants have encroached upon their property. Only if the plaintiffs are able to show that the defendants have encroached upon their property, they would be entitled to the relief. Any amount of oral evidence is not a substitute or sufficient to prove the encroachment. To cut short the litigation to reduce recording evidence, the trial Court in its wisdom, thought it fit to appoint a Commissioner even before the commencement of trial. That is how the duration of the litigation could be curtailed and speedy disposal of the civil matter could achieved.”***

6. The said authority aptly applicable to the present case on hand under such circumstance this court feels that the appointment of Commissioner is much necessary for adjudicating the matter on issue. Accordingly, I proceed to pass the following;

::ORDER::

- ❖ The application filed by plaintiff under order 26 rule 9 of C.P.C. is hereby ***allowed***.
- ❖ The Thasildar of Kadur Taluk is appointed as a court commissioner. The Commissioner fee fixed is Rs.3000/-
- ❖ Both parties are directed to file memo instructions.
- ❖ The plaintiff is directed to deposit the commissioner fee as stated above.

Call on: 12.12.2022

Sd/-
Addl. Civil Judge & JMFC.,
KADUR