

ORDERS ON IA NO.4

The defendants have 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 defendants have stated that the properties of the plaintiff and defendants are adjoining properties and there is dispute regarding the boundaries of the properties. Therefore, the appointment of Commissioner is very necessary to ascertain the properties of the both parties.

On the other hand the defendant submit that he has no objection to allow the application filed by the plaintiff.

3. Heard arguments on both sides.

4. Perused records. The plaintiff filed the suit against the defendants for the relief of permanent injunction with respect to the schedule properties. Admittedly the defendants having property to the attached the schedule property and the defendants seriously disputed the boundaries and measurement of the schedule property. More over the plaintiff has stated that he has no objection to appoint the commissioner to identify of the schedule property as well as defendants property. Further the defendants have taken contention that the plaintiff has encroached the property of defendants. 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.”***

5. 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 defendants 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.2000/-

- ❖ Both parties are directed to file memo instructions.
- ❖ The defendants are directed to deposit the commissioner fee as stated above.

Call on: 31.10.2022

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