

:ORDERS ON IA.NO.6:

This is an application filed by the defendant No.1 under order 26 Rule 9 R/w section 151 of CPC for appointment of Assistant Engineer, Town planning authority, Chikkamagaluru, to conduct the local investigation and Submit report to this court , in order to know the existing features and measure the schedule property of the plaintiff and defendant and fix the boundaries as the sale deeds.

In the affidavit it is contended that the plaintiff filed suit against the defendants for relief of permanent injunction on the basis of sale deeds and further contended that there is ambiguity regarding

the boundaries, therefore the appointment of commissioner is very necessary to adjudicate the matter in accordance with law. Accordingly, prayed to allow the application.

The counsel for the plaintiff filed objection to the application contending that the application is not maintainable both in law or on facts. The plaintiff filed suit against the defendants for relief of permanent injunction and he has to be prove that he is in possession over schedule property as on the date of filing of the suit. There is no dispute regarding boundaries accordingly the application filed by the defendants no merits. Hence prayed to reject the application.

Heard arguments on both sides.

Perused the pleadings of the both parties, it is noticed that plaintiff filed a suit for the relief of permanent injunction. In a suit for permanent injunction it is for the plaintiff to prove his possession before the court as per law. Admittedly the trial was commenced and plaintiff adduce evidence. The issue arises before this court is that only possession of the plaintiff and interference caused by defendants. In a suit for permanent injunction the parties cannot expect the court to appoint the commissioner to conduct the local investigation and measure the properties. Moreover there is no issue lies on the defendants. Hence the suit has been filed claiming possession over the suit property on the basis of sale

deeds. The defendant has not claim against the plaintiff in respect their property. The oral and documentary evidence led in by the parties to the suit is sufficient in this case on hand to decide the case on merits. This court relied upon the decision of the Hon'ble High Court of Karnataka in the case of Sri Puttappa V/s Ramappa reported in ILR 1996, Kar.144. Wherein the Hon'ble court held that the question of possession decided by the court on basis of evidence not to be delegated to commissioner. In this case the plaintiff claims his possession on the documents of sale deeds. Therefore this court opinion that the appointment of Court commissioner is not necessary to adjudicate the matter. In the absence of court commissioner this court adjudicating the matter on the basis of oral and documentary evidence available on record effectively. Hence the application filed by the defendants is no merits. Accordingly this court proceed the pass following order;

:ORDER:

IA.No.6 filed by the defendants under Order 26 Rule 9 of CPC is hereby rejected.

No order as to cost.

For further chief of PW-1.

Call on:18.08.2022.

Sd/-

C/c III.Addl.Civil Judge & JMFC.,
Kadur.