

ORDERS ON IA NO.II

The present application is filed at the stage of further evidence in lieu of enquiry. The DHR has filed the present application seeking appointment of Court Commissioner for the purpose of ascertaining encroachment of decree schedule property.

2. The decree holder has contended that the judgment debtor has encroached upon the decree schedule property in violation of decree subject matter of this execution petition. For the purpose of ascertaining the said encroachment, appointment of court commissioner is very much necessary and the sketch and report of the court commissioner would aid in resolution of dispute between the parties. On these grounds, the DHR has sought for allowing the application.

3. On the other hand, the judgment debtor has filed his statement of objections wherein contended that order 26 Rule 9 of CPC is not applicable in execution proceedings. In order to obtain the relief

sought in the application, the DHR has to establish the allegation independently and he cannot shift the same on the shoulder of others. No grounds are made out to appoint the court commissioner and the one stated in the application is frivolous and fictitious. The dispute between the parties cannot be resolved by appointing the court commissioner. On the above grounds, the JDR has sought for rejection of the application.

4. Heard learned counsel for DHR, perused the written argument of JDR and also perused the entire materials available on record.

5. This is a execution petition where the decree holder has alleged violation of subject matter decree i.e., one passed in OS.No.233/1994 wherein granted permanent injunction against the judgment debtor in connection to land to extent of 15 guntas in Sy.No.215 of Hale Mudigere Village. In the instant application, the DHR has specifically alleged that the JDR has encroached upon the decree schedule property. The ground urged by the JDR is that order 26 Rule 9 of CPC has no application in the execution proceedings. This ground cannot be accepted as order 21 Rule 32(5) which provides for execution of a decree of permanent injunction is exhaustive and also include relief of prohibitory as well as the mandatory injunction. Herein the case, the specific allegation of the DHR being that the JDR has encroached upon the decree schedule property in violation of subject matter decree, ascertaining the alleged encroachment shall have bearing on full and final adjudication of this petition.

Under the circumstances, this Court considers that the appointment of court commissioner as sought for is necessitated. Hence, the following:

ORDER

I.A.No.II filed by the DHR under Order XXVI Rule 9 of Code of Civil Procedure is hereby allowed and accordingly, court commissioner is appointed.

ADLR, Mudigere Taluk, is hereby directed to appoint qualified surveyor to conduct Commission work to hold local inspection so as to conduct the survey of decree schedule property, to note the encroachment if any in the same and to submit report in that regard.

Commissioner fee is tentatively fixed at Rs.3,000/-.

Both parties are hereby directed to file their respective memo of instructions by: 05.12.2024.

Sd/-
(VISHWANATH.A)
PRL. CIVIL JUDGE & JMFC.,
MUDIGERE.