

ORDERS ON COMMISSIONER REPORT
DTD: 27.10.2023

The fresh Commissioner Report dtd: 27.10.2023 is objected by the plaintiff, defendant No.3 and 4 and also by the defendant No.2 in O.S.No.186/2014.

2. The plaintiff has submitted that the Commissioner has not followed the memo of instructions, he has not mentioned the extent of land stated to have encroached by the defendants, no road or path way leading to the plaint schedule property is marked and also not mentioned obstruction caused over the same.

3. The defendant No.3 has submitted that the Court Commissioner has not measured the properties in Sy.No.58/2 and 58/11, the traces of stream adjacent to Sy.No.58/11 is also not mentioned. Possession over the land in Sy.No.58/2 is also not mentioned in the report of Court Commissioner.

4. The defendant No.4 as well as defendant No.2 in O.S.No.186/2014 have contended that the Court Commissioner has not followed their memo of instructions, he has not issued notice to the 2nd defendant by name Faizal in O.S.No.186/2014.

5. Having heard the respective counsels appearing for respective parties in both the suits, this Court has carefully perused the materials on record as well as Commissioner report dtd: 27.10.2023.

6. The present suit is filed seeking permanent injunction against the defendants with respect to item No.2 and 3 of suit properties and for possession of suit 'B' schedule property from the defendant No.4. In this suit, defendant No.2 is absent and the

case against defendant No.1 is ordered as abated vide order dtd: 24.07.2019.

7. The connected matter i.e., O.S.No.186/2014 is filed seeking permanent injunction with respect to the suit schedule properties. It is no doubt that the plaintiff in both suits are same and the suit schedule properties are also same except suit 'B' schedule property in O.S.No.120/2013 which the plaintiff claims to be the encroached portion encroached by the defendant No.4. It is also clear that the defendant No.1 and 4 in O.S.No.120/2013 are defendant No.3 and 1 respectively in O.S.No.186/2014. There are other defendants in O.S.No.120/2013 by name Mansoor and M.S.Krishnegowda and Faizal – defendant No.2 in O.S.No.186/2014.

8. Even though this Court has rejected the earlier Commissioner report and thereby specifically instructed the Court Commissioner to note the extents of land in suit schedule properties of both the suits and also the extent of encroachment over the said lands, the Commissioner report is silent with respect to these aspects whereas the Court Commissioner has only shown the extent of alleged encroached portion. Commissioner report further discloses that notice to the defendant No.2 in O.S.No.186/2014 (Faizal) is not issued. Therefore, the Commissioner report is incomplete and requires to be rejected. Hence, the following;

ORDER

Commissioner report dtd: 27.10.2023 is hereby rejected.

Court Commissioner is directed to submit fresh report by considering the memo of instructions of respective parties and also scrupulously follow the instructions mentioned hereunder:

1. Court Commissioner shall issue 10 days prior notice through RPAD to the parties in both the suits i.e., O.S.No.120/2013 and so also O.S.No.186/2014.
2. Court Commissioner shall measure and demarcate the suit schedule properties in both the suits. He shall also measure the lands in Sy.No.65/2, 65/3, 64/3, 58/9 as claimed by the defendant No.2 by name Faizal in O.S.No.186/2014 and he shall also measure the land in Sy.No.58/2 and 58/11 claimed by the defendant No.3 by name M.S.Krishnegowda in O.S.No.120/2013.
3. Court Commissioner shall conduct survey of the suit properties in accordance with law and submit the sketch mentioning the extent of lands and he shall also separately show and mention the extent of encroachment if any.
4. Court Commissioner shall identify and mark the road/pathway if any to reach the suit schedule properties in O.S.No.120/2013 and note the obstruction if any caused to the said road or path way.
5. Court Commissioner shall also specifically mention about the possession over the lands subject matter and in case of any dispute and obstruction with respect to the possession, he shall also mention specifically as to between whom the dispute is.

Office is directed to issue intimation to the Court Commissioner along with copy of this order, copies of plaint in both the suits and necessary documents so as to enable the Court Commissioner to submit his report without making way for any objections in future.

The contesting defendant No.3 in this suit as well as defendant No.2 in O.S.No.186/2014 are seeking for identification of the properties claimed by them. Therefore, additional Commissioner fee of Rs.2,000/- shall have to be paid by them proportionately.

Since the above case is old matter, respective parties are directed to co-operate with the Court Commissioner for filing his report expeditiously as possible on or before: 28.03.2024.

Sd/-

(VISHWANATH A.)
A.C.J & JMFC., MUDIGERE