

ORDER ON I.A.No.IV FILED BY PLAINTIFF
UNDER ORDER XXVI RULE 4(1) (a) OF
C.P.C.

The plaintiff filed an application under Order XXVI Rule 4(1) (a) of C.P.C. to issue commission for examination of the plaintiff by appointing court commissioner in the above matter.

2. In the affidavit annexed to I.A.No.IV plaintiff stated that, the above suit is filed for declaration that plaintiff is the absolute owner of the suit schedule property along

with a prayer seeking permanent prohibitory as against the defendant along with consequential relief. Plaintiff submit that the defendant was his nephew. As he was not settled in life he requested with him that he will look after and manage his property including the schedule property on his behalf throughout his life time. By believing the words of defendant, he made a registered gift deed dated 2/11/2011 Registered document No.1458/2011-12 before the S.R.O. of Mudigere in respect of schedule property in favour of the defendant. The said gift deed was executed by plaintiff in favour of defendant on the specific understanding that the defendant shall look after and manage the other agricultural property held by plaintiff, adjoining to the schedule property through out plaintiff's life time and he must improve the agricultural property as a caretaker on behalf of the plaintiff.

3. Plaintiff further stated that defendant looked after the adjoining

property belonging to plaintiff only for few months and later defendant failed to manage plaintiff's property. Hence plaintiff filed the suit for cancellation of the gift deed and consequently sought relief of permanent prohibitory injunction not to trespass in to the schedule property in future and same is pending adjudication in O.S.No. 189/2014. Since plaintiff filed the above suit against defendant seeking cancellation of gift deed, defendant started interfering with the suit schedule property as well and accordingly.

4. Plaintiff further stated that he is a spiritual person from last 47 years and will be in continuous meditation and Devi Aradhana. The nature of Aradhana does not allow plaintiff to travel much. It is his daily routine practice and procedures for Devi Aradane. Due to the spirituality which he do for the well being of the people requires meditation and Pooja and since he is spiritual person and not in position to travel to Mudigere for leading evidence

owing to the above said reasons and also due to plaintiff old age and certain ailments. Hence, plaintiff prays to appointment of Court commissioner for examining plaintiff and also cross examination through Court commissioner. Hence, plaintiff prayed to allow the application.

5. On the other hand defendants filed objection to the IA No. IV. In the objection defendant contended that application filed by the plaintiff is not maintainable either in law or on facts. The application is false and frivolous. It is false to state that the plaintiff has suffering from ill-health. Plaintiff is able to attend the Court to give evidence and has filed the application with intentionally to avoid appearing the Court. It is false to state that he is spiritual person, but he traveling to Varanasi, Kashi, Bengaluru for events, but he is purposely not intend to come to the Court and give evidence and has filed the application to

appoint a Court commissioner. Hence, defendant prayed to dismiss the application.

6. Heard both side and perused the materials on record.

7. From the above rival contention, the following points arise for my consideration.

1. Whether the plaintiff has made out ground to allow I.A.No.IV?

2. What order?

8. My answer to the above points are as under:

Point No. 1 : In the Affirmative

Point No. 2 : As per final order, for the following:-

REASONS

9. **POINT NO.1:** Admittedly plaintiff has filed the suit for declaration that the plaintiff is the absolute owner of suit schedule property and for permanent prohibitory injunction restraining the defendant, his men, agents, servants or any officials claiming through or under him from in any way trespassing and / or interfering with the peaceful possession and enjoyment of the schedule property by the

plaintiff. When the matter is posted for evidence of plaintiff he has filed the present application for appointment of court commissioner for examination of plaintiff by appointing court commissioner. In the affidavit annexed to the application plaintiff stated that he is a spiritual person from last 47 years and will be in continuous meditation and Devi Aradhana. The nature of Aradhana does not allow plaintiff to travel much. It is his daily routine practice and procedures for Devi Aradane. Due to the spirituality which he do for the well being of the people requires meditation and Pooja and since he is spiritual person and not in position to travel to Mudigere for leading evidence owing to the above said reasons and also due to plaintiff old age and certain ailments. The order XXVI rule 4 empowers the court to issue commission for examination of any person resident behind the local limits of its jurisdiction. If the application is allowed no hardship will be caused to defendant. Hence, I answer point No.1 in the Affirmative.

10. **POINT NO.2:-** In view of the above said reasons stated in point No.1, I proceed to pass the following:

ORDER

The I.A.No.IV filed by the applicant/ plaintiff U/o 26 Rule 4(1) (a) of C.P.C. for appointment of court commissioner is hereby allowed. The commission fee is tentatively fixed at Rs.3000/-.

To suggest the name of court commissioner.

Call on 20/01/2024.

(JAYAPRAKASH V.)
SENIOR CIVIL JUDGE AND JMFC.,
MUDIGERE.