



**IN THE COURT OF THE SENIOR CIVIL JUDGE AND
JMFC AT N.R.PURA, ITINERATE AT KOPPA**

Present: Smt.B.S.Rayannawar, B.A., L.L.B,
Senior Civil Judge & JMFC.,
N.R.Pura, Itinerate at Koppa.

Dated this the 18th day of January, 2024

OS No.05/2023

BETWEEN:

Sri.H.R.Shivappa Gowda

...Plaintiff.

V/s.

AND:

Sri. H.A.Channakeshava and one

...Defendants.

IA.NO.III

BETWEEN:

Sri.H.R.Shivappa Gowda

...Applicant/Plaintiff.

V/s.

AND:

Sri. H.A.Channakeshava and one

...Opponents/Defendants.

**ORDER ON I.A.No.III**

Learned counsel for the Applicant/plaintiff filed I.A No.III under Order XXVI Rule 9 R/w Section 151 of CPC to conduct the survey and identified the land A & B suit schedule properties in dispute.

2. I.A. supported with the affidavit of plaintiff stating that, he is the plaintiff in the above case, he filed the above suit against the defendant for possession of the 'B' schedule property. It is just and necessary to appoint an expert to conduct the survey and measure, ascertain the actual possession and identification of property in dispute, as it is fit to appoint ADLR Koppa as Court commissioner. If the application is allowed no prejudice will caused to other side if not he will be put very much hardship and injury. Hence prays to appoint ADLR Koppa as court Commissioner.



3. I.A objected by opponent/Defendants by filing written objections contending that, the application is not maintainable either in law or on facts. As deposed by the plaintiff during his cross examination that already survey of 'A' and 'B' schedule property conducted by surveyor in the year 2006, and plaintiff also deposed that he has given survey sketch and survey report to his advocate, but the same are not produced before the court.

4. Further contended that, the defendant is in possession of land in Sy.No.8 of Herur Village, and already obtained injunction order against the plaintiff, the plaintiff in one or other way to get the property of defendant with malafide intention has filed this application. If the application is allowed there are chances that the plaintiff colluding with survey department may create documents. The present application is filed only to drag the matter.



Though the plaintiff having sketch and survey report but has not produced the same before the court, this application is filed only to create the documents. Plaintiff filed the present suit seeking permanent injunction for 'A' schedule property, in view of the same the present application is not maintainable one, hence there is no necessary to appoint court commissioner. Hence prays to reject the application.

5. Heard both respective counsels, perused affidavit filed plaintiff, IA No.3 annexed affidavit, objection filed by defendants and other material on record.

6. The points that arise for my consideration are as follows:

POINTS

1. Whether the applicant /plaintiff made out grounds to appoint court commissioner?



2. What order?

7. My answer to the above points are as follows:

Point No.1 : In the Affirmative,
Point No.2 : As per final order
for the following;

REASONS

8. **Point No.1:** This is the suit filed by the plaintiff against the defendants for possession and injunction. In this case the defendant filed I.A.No.II U/o XXVI Rule 9 of CPC to appoint any survey officer as Court Commissioner to conduct the survey for identification of schedule 'A' and 'B' property.

9. Learned counsel for plaintiff submits that, the plaintiff filed suit for possession of 'B' schedule property, it is just and necessary to ascertain the actual possession and identification of property in dispute. It is the case of the plaintiff that, the defendants have encroached 20 guntas of property in land Sy.No.10/3, and trying to



interfere into 'A' schedule property.

10. This was stoutly opposed by the defendant. Learned counsel for defendant submits that the application is filed only to drag the proceedings, and to build the documents. Plaintiff already deposed that the survey was conducted in the year 2006 but has not produced the survey sketch and report, when evidence let by the parties itself elucidates the point of dispute between the parties, and then there is no necessary to appoint court commissioner.

11. Learned counsel for plaintiff submits that, by appointing court commissioner, it possible to ascertain the nature of encroachment. And Moreover as per plaintiff the survey was conducted in the year 2006, though plaintiff not produced said survey report, but the plaintiff fled suit in the year 2006 that is O.S.No.84/2006 which was



compromised, and later on in the year 2012 the defendant also filed suit against the defendants, and now it is the contention of defendants that on 25.12.2022 the defendants tried to interfere into the plaintiff property by removing fence. Hence the purpose of issuing commission by the court is to impart complete justice to the parties to the suit. Hence this question goes to the root of the matter. As these aspects necessitate the appointment of a court commissioner to measure the suit property and to submit the report stating the, what is the encroachment area of the suit property. However court cannot lose sight of the fact that both parties are litigating this suit since several years, By adopting this procedure interest between both the parties can be balanced, with these observations this court **answer point No.1 in the Affirmative.**

12. **Point No.2:** Hence, this court proceed to pass the following:



ORDER

IA No.III filed under Order XXVI
Rule 9 R/w Section 151 of CPC by the
applicant/ plaintiff is hereby allowed.

The ADLR Koppa is appointed as
court commissioner to conduct the
survey and identified the land 'A' and
'B' schedule property.

(Dictated to the Stenographer directly on the computer, then
corrected and pronounced by me in the open court on this date the
18th day of January, 2024)

Sd/-

(B.S.Rayannawar)

Senior Civil Judge and JMFC.,
N.R.Pura, Itinerate at Koppa.