



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

Present: Sri Raghunatha Gowda K.T., B.Com.,L.L.B,
Senior Civil Judge & JMFC., N.R.Pura, Itinerate at Koppa

Dated this the 19th day of April, 2025

O.S. No.8/2022

PLAINTIFF : Dr. Nataraj R. Rao,
S/o Late K. Ramesh Rao,
aged about 51 years,
R/o Adarsha Hospital,
Ambedkar Road,
Koppa Town, Koppa Taluk,
Chikkamagaluru District.

(By Sri B.V.K., Advocate)

Vs/-

DEFENDANT : Meega Chandrashekar,
S/o Late Manjappa Hegde,
Advocate, aged about 76 years,
Meega House, T.M. Road,
Koppa Town, Koppa Taluk,
Chikkamagaluru District.

(Represented by By Sri M.H.N./S.P.D., Advocate)

I.A. No.XVI



Applicant/defendant : Meega Chandrashekar

V/s

Opponent/plaintiff : Dr. Nataraj R. Rao

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ORDER ON I.A. No.XVI

When the matter posted for defendant evidence at this stage the present application is filed by the defendant under order XXVI Rule 4 R/w. Sec.151 of C.P.C to appoint a court commissioner for record the evidence of defendant in the interest of justice.

2. In support of this application the defendant filed his affidavit, contended that he was became bodily very weak and unable to appear before this court to physically deposed his evidence. Further he contended that he undergone multiple surgeries for his ailments in the recent years and he almost confined to his house, so that reason he unable appear before the court. So that reason to appoint an advocate, who is having not less than 5 years practice to



record the evidence and submit his report before this court. Further he contended that if the said application is allowed no loss or hardship caused to the plaintiff. Hence he prays to allow this application.

3. Per contra the plaintiff counsel filed objection to the said application contended that the application filed by the defendant is not maintainable either in law or facts. Further he contended that defendant is not produce any supportive document to show that he is suffering from ailment. Further he contended that the defendant is a senior most advocate in Koppa Bar Association, there shall be an advocate of being the commissioner appointed by court, who is capable to render his work without getting influenced by the defendant. Further he contended that there is every possible chance for happening of the variation with unwanted ups and downs during the event of recording of evidence and the plaintiff also express his doubtness regarding the free atmosphere to record the evidence. Hence he prays to reject the said application.

4. Heard the arguments of both side and perused the



records.

5. The following points arise for my consideration.

1. Whether the appointment of court Commissioner is necessary to record the evidence of defendant?
2. What order?

6. My answer to the above points is as follows:

Point No.1 : In the Affirmative.

Point No.2 : As per the final order
For the following

REASONS

7. **Point No.1:** On perusal of the records the plaintiff filed the suit against defendant for the relief of specific performance of contract and also seeking alternative relief of refund of earnest amount with interest at the rate of 18% p.a. Now the matter posted for defendant evidence at this stage the defendant filed this application to appoint an advocate as a court commissioner to record the evidence of defendant. On perusal of the document produce by the



defendant, the defendant suffering from ailments and he produce the medical records i.e., City Scan report, prescription, discharge summary, report of radiology, report of Neuro Brain summary, Colonoscopy report with photos.

8. On perusal of the document produce by the defendant it clearly discloses that the defendant is suffering from ill-health and he taken rest in his house due to undergone multiple surgeries. Further the plaintiff has not disputed the medical records produce by the defendant. The only contention that the defendant is senior most advocate in Koppa Bar Association, there is a chances for influence to the commissioner while recording the evidence. The contention of plaintiff cannot be accepted because the commissioner conducted the commissioner work in the presence of plaintiff and his counsel, if there is any influence made by defendant certainly the plaintiff can objected the same. Further on perusal of the record and reasons stated in the affidavit of the defendant is satisfied. Further in order to proper adjudicate the matter the appointment of Court Commissioner is required that the advocate, who has



practiced not less than 5 years as a court commissioner and both the plaintiff and defendant to suggest the name of commissioner to conduct the commissioner work. Hence I answer the point No.1 in the Affirmative.

9. **Point No.2:** For the above discussion I, proceed to pass the following order;

ORDER

The I.A. No.XVI filed by the defendant under order XXVI Rule 4 R/w. Section 151 of CPC to appointment of advocate as a court commissioner to record the evidence of defendant is hereby allowed.

Both plaintiff and defendant to suggest the name of advocate to record the evidence of defendant and submit his report.



Further the commissioner fee fixed at Rs.2,000/-, the defendant shall deposit the commissioner fee, after that office is directed to issue commissioner warrant to record the evidence of defendant.

No order as to cost.

(Dictated to the stenographer directly on computer, corrected by me and then pronounced in open court on this **19th day of April, 2025**)

Sd/-
(Raghunatha Gowda K.T.)
Senior Civil Judge & JMFC.,
N.R.Pura, Itinerate at Koppa.