



IN THE COURT OF CIVIL JUDGE AND J.M.F.C, SRINGERI

**PRESENT: Sri. Rahul Shettigar, B.Com (Hons.), LL.B
Civil Judge & J.M.F.C, Sringeri**

DATED THIS THE 14th DAY OF OCTOBER 2024

ORIGINAL SUIT No. 5/2023

BETWEEN:

Smt. Premaleela B and another **PLAINTIFFS**

(By Sri. V R Natashekara, Advocate)

-AND-

Smt. Shylaja and another **DEFENDANTS**

(By Sri. H R Umesh Heggade, Advocate)

IN I.A.NO.X

Smt. Premaleela B Shetty and another **APPLICANTS/ PLAINTIFFS**

-AND-

Smt. Shylaja and another **OPPONENTS/ DEFENDANTS**

PARTICULARS

<i>i</i>	<i>Provision under which the application is filed</i>	<i>Order XXVI Rule 9 r/w Section 151 of CPC</i>
<i>ii</i>	<i>Relief sought for</i>	<i>Appointment of Commissioner</i>
<i>iii</i>	<i>The date on which the application is filed</i>	<i>23.09.2024</i>
<i>iv</i>	<i>Number of the application</i>	<i>I.A.No.X</i>
<i>v</i>	<i>The date on which the objections are filed by different opponents</i>	<i>01.10.2024</i>
<i>vi</i>	<i>The date on which the orders were passed on the said application</i>	<i>14.10.2024</i>



ORDERS ON I.A. NO. X

1. Applicants/ Plaintiffs have filed the instant application under Order XXVI Rule 9 r/w Section 151 of C.P.C with the prayer to appoint the Court Commissioner to conduct local inspection and submit his report along with the sketch in respect of the suit schedule property.
2. In the affidavit appended to the application, the Applicants/ Plaintiffs contend that the present suit has been filed seeking the relief of rectification of an instrument against the Defendants; the suit schedule property was previously part of Sy.No.226 of Majara Sachidanandapura Village, Sringeri, Chikkamagaluru District, which was owned and possessed by the husband and father of the Defendants, respectively. Sy.No.226 was converted for residential purposes, and a layout was formed from which the suit schedule property was sold to Plaintiff No.1 under a registered sale deed; subsequently, following these transactions, all the revenue records were mutated in the name of Plaintiff; when the adjacent owner of the suit schedule property began interfering with Plaintiff No.1's possession, she filed a suit seeking relief of permanent injunction before this Court as per O.S



No.6/2010; in that suit, the Court appointed a Commissioner to conduct local inspection, and he submitted a report indicating that there was an apparent error in the total extent of the suit schedule property during its sale in the year 1988; the report though is otherwise correct contains a minor mistake in mentioning of the proper survey number as Sy.No.226; following the submission of the Commissioner's Report to the Court, the Plaintiffs got conducted a separate survey of the suit schedule property through a private surveyor; this survey revealed a different extent of the property than what is shown in the sale deed which further clarified the aspect on there being an apparent error in the mentioning of the proper extent in the sale deed; the suit schedule property is situated on the southern side of Sy.No.226, with road access from the northern and eastern sides; Plaintiff No.1 has now gifted the suit schedule property to Plaintiff No.2; despite reasonable requests, the Defendants have refused to execute the registered rectification deed, which has necessitated the filing of this suit; the survey of the suit schedule property is of utmost importance in this case; if a Commissioner is appointed, it will assist the Court in arriving



at a just decision in the matter; if the application is allowed, no hardship would be caused to the other side, however, if it is rejected, irreparable loss and injury would be caused to the Plaintiffs. Therefore, the prayer is to allow the application.

3. *Per contra*, the Opponents/ Defendants have filed detailed objections, contending that the application is bad in law and on facts and hence, it should be dismissed in *limine*; the original sketch of the conversion of Sy.No.226 of Sringeri Village has not been produced before the Court by the Plaintiffs; the necessity for rectification would arise only if there is a difference in the extent shown in the original sketches, which the Plaintiffs have intentionally withheld; in such circumstances, where the Plaintiffs have withheld necessary sketches no purpose would be served by appointing a Court Commissioner; the Plaintiffs cannot seek the appointment of a Court Commissioner to survey the suit schedule property unless the original sketches are produced and compared with the extent shown in the sale deed;. appointing a Court Commissioner would serve no useful purpose without this comparison; moreover, according to the Plaintiffs' own case, they first realized there was a mismatch



in the extent shown in the sale deed through the Court Commissioner's Report filed in O.S No.6/2010; the Defendant in that suit was one Rajendra alias Santhosh Kumar, who is not a party to the present suit; under these circumstances, it would not be proper to direct a survey in the absence of a person who may be affected by the outcome of such survey; if the application is allowed, irreparable loss and injury would be caused to the Opponents/ Defendants; on the other hand, if the application is dismissed, no hardship would be caused to the Applicants/ Plaintiffs.

4. Heard both sides.
5. Having heard the rival contention and on perusal of the materials, the points that would now arise for my consideration are as under -

Point No.1 : Whether the Applicants/ Plaintiffs have made out sufficient grounds for appointment of the Court Commissioner to conduct local inspection?

Point No.2 : What Order?

6. Now, my findings on the above points are as follows -



Point No.1 : In the Negative

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

REASONS

7. **Point No.1:** The instant suit is filed seeking relief of rectification of instrument being the registered sale deed dated 02.07.1988 in so far as it relates to the wrong extent shown therein of the suit schedule property and such other ancillary reliefs. The instant application is filed by the Applicants/ Plaintiffs with the prayer to appoint A.D.L.R as Court Commissioner to conduct survey and submit his report along with sketch concerning the suit schedule property.
8. Before advertng to the factual matrix any further, it would be beneficial to first understand the overall concept pertaining to the appointment of commissioner for purpose of local investigation. Order XXVI Rule 9 of CPC, reads as under:

"Commissions to make local investigations - In any suit in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market- value of any property, or the amount of any mesne profits or damages or annual net profits, the Court may issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon to the Court:



Provided that, where the State Government has made rules as to the persons to whom such commission shall be issued, the Court shall be bound by such rules.”

9. Order XXVI Rule 9 of CPC, empowers the Court to issue commission to make local investigation, which may be required for the purpose of elucidating any matter in dispute. The Court can issue local commission *suo motu*, if in the facts and circumstances of the case, it is deemed necessary that a local investigation is required and is proper for the purpose of elucidating any matter in dispute. The object of local investigation under Order XXVI Rule 9 of CPC is to obtain evidence, which from its peculiar nature can best be had from the spot itself. Such evidence enables the Court to properly and correctly understand and assess the evidence on record. It clarifies or explains any point which is left doubtful on the evidence on record. The purpose of appointing commissioner for local investigation of the spot is not to help the party to establish a case. It is needless to state that the object of Order XXVI Rule 9 is not to assist the party to collect evidence. Since the object of the local investigation is not so much to collect evidence which can be taken in the Court, but the purpose is to obtain such evidence, which from its peculiar nature, can



only be had on the spot with a view to elucidate any point which is left doubtful on the evidence produced before the Court.

- 10.** Reverting to the factual matrix of the instant case, the averments in the plaint presented by the Plaintiffs clearly indicate, at Para No.6, that the basis for their realization of an apparent error in the stated extent of the suit schedule property in the sale deed dated 02.07.1988 is the Commissioner's Report submitted in the earlier suit brought by Plaintiff No.1 against one Rajendra in O.S No.6/2010. The cause of action for filing the suit is said to have arisen on 26.06.2019, the date on which the Commissioner's Report was filed in Court, which is when the Plaintiffs claim to have first realized the mistake in the sale deed. Plaintiff No.2, who has been examined in the suit as PW-1, has also produced the Commissioner's Report from the earlier suit, marked as Ex.P-8. This narrative indicates that a Commissioner was already appointed for conducting survey of the suit schedule property, and after surveying it, he filed his report, which the relief under the instant application aims to replicate. The fact that this report pertains to an earlier suit does not undermine its



validity and the Plaintiffs are well within their rights to rely on this report in the present suit, as they have appropriately got marked the document as Ex.P-8.

- 11.** Given these circumstances, with an existing Commissioner's Report that the Plaintiffs have used as the basis for bringing this suit, I am of the considered opinion that there is no necessity to appoint a Court Commissioner to achieve something that is already part of the Court record. While the Plaintiffs have alleged that there is a wrong mention of the survey number of the properties in the earlier report, such a limited aspect can be proved either through corroborative documents or by examining the Court Commissioner. Therefore, there seems to be no need to once again appoint a Court Commissioner to survey the suit schedule property to address this limited defect.
- 12.** The application at hand appears to have been filed only with an intention to protract the proceedings at this fag end of the matter and in view of the above discussion, the same is found to be devoid of any merits deserving dismissal. With these observations, the **Point No.1** which has arisen for my consideration is answered in the **Negative.**



- 13. Point No.2:** For the foregoing reasons, I proceed to pass the following -

ORDER

I.A No.X filed by the Applicants/ Plaintiffs under Order XXVI Rule 9 r/w Section 151 of C.P.C is hereby dismissed.

Costs made easy.

(Dictated to the Stenographer then transcribed, typed, computerized and corrected, then pronounced by me in the Open Court, on this the 14th DAY OF OCTOBER, 2024)

**(Rahul Shettigar)
Civil Judge & J.M.F.C,
Sringeri.**