

KACM710002102018



1

**IN THE COURT OF THE ADDITIONAL CIVIL JUDGE AND  
J.M.F.C., AT TARIKERE**

**Present:** Sri.Ramamurthy N. B.A. LL.B.,  
Addl. Civil Judge & JMFC, Tarikere.

**Dated: 22<sup>nd</sup> Day of March 2022**

**ORIGINAL SUIT NO.56/2018**

**PLAINTIFF/s** :  
K.V.Shanthakumar S/o Late Venkataiahgowda, 62  
years, r/o Kenchikoppa village, Halasuru post,  
Lakkavalli Hobli, Tarikere Taluk.

VERSUS

**DEFENDENT/s:**  
Smt.B.S. Devika W/o Late K.V Sridhar, and others

**ORDER ON I.A.NO.V FILED BY THE DEFENDANT U/O 26  
RULE 9 R/W SECTION 151 OF CPC.**

The defendant No.2 has filed present I.A., seeking appointment of court commissioner preferably PWD, Engineer to measure the suit property from all four corners and report physical feature of the suit property.



2. In the annexed affidavit, the defendant No.2 has stated that, the plaintiff has filed suit against them for the relief of partition and separate possession. He has taken specific contention that, the plaintiff has not given proper measurement and boundary of suit property. In order to ascertain the same, the appointment of court commissioner is necessary. Hence, prays for allow the I.A.

3. In the objections, the plaintiff has stated that, the application filed by the defendant is not maintainable either in law or on facts. The plaintiff has mentioned the measurement and boundaries in the suit schedule. The defendant has filed this I.A., only to delay the disposal of the suit. There is no need to appoint the court commissioner to measure the suit property. Hence, prays for dismiss the I.A.

4. Heard arguments of both counsels and perused the materials in file.

5. The suit of the plaintiff is for partition and separate possession in respect of suit property and present I.A., filed by the defendant No.2 seeking appointment of the court commissioner to measure the suit property. According to him, the plaintiff has not given the measurement and



boundaries of the suit property. In order to ascertain the same, the appointment of court commissioner is necessary.

6. Upon perusal of materials on record, it appears that the plaintiff has mentioned the assessment number, measurement and boundaries of the suit property in the plaint schedule, which are mentioned in the document produced by him. The present suit of the plaintiff is for partition and separate possession.

7. It is relevant to note that Hon'ble Madras High Court observed regarding appointment of court commissioner in the following case which reads as follows:

(2006) 4 MLJ 626 (Mad) T.K. Krishnamurthy versus Tamil Nadu Water and Drainage Board, rep. by its Senior Engineer, RWS Division, Ootacamund and Another - O. 26, Rule 9 — Appointment of Commissioner — Cannot be appointed to gather evidence for the parties — It is for the parties to prove their case — Report of the Commissioner can only aid the Court in evaluating the evidence.

8. According to the above said observation, the commissioner cannot be appointed to gather evidence to prove the case of the parties. The parties should prove their case by placing evidence. In the present case, the plaintiff has mentioned the measurement and boundaries of the suit

KACM710002102018



4

property and produce documents for the same. The averments of the I.A., shows that, the defendant has filed this I.A., to ascertain the possession and gathering evidence. Hence, by considering the observations of the above quoted decision, the defendant No.2 has not made out sufficient ground to allow the I.A. Hence, this court proceed to pass the following :

**ORDER**

I.A.No.V filed by the defendant under Order 26 Rule 9 r/w Section 151 of CPC is rejected.

No order as to cost.

(Dictated to the Stenographer, transcribed by her, corrected by me and then pronounced in the open Court on this the day of 22<sup>nd</sup> day of March 2022.)

sd/-

**(RAMAMURTHY N.)**

**ADDL.CIVIL JUDGE & J.M.F.C.,  
TARIKERE.**