

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

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

O.S.No.288/2012
Dated:29th May 2019.

Plaintiff : T.V. Manjunath
(Reptd. by : Sri T.L.P. Advocate)
-Vs-
Defendants : Thimmakka and others
(Reptd. by : Sri H.S.N. Advocate)

I.A.No.14

Applicant in I.A/: T.V. Manjunath
Plaintiff

-Vs-

Opponent in IA: Thimmakka and others
Defendants

ORDERS ON IA.NO-14

The plaintiff has filed I.A.No.14 U/O.26 Rule 9 of CPC prays that, to appoint a surveyor as court commissioner attached to the office of Tahasildar Tarikere to measure and find out the encroachment of plaint 'B' schedule property and report the same to this court

2. In support of the application, the plaintiff has filed affidavit stating that, the plaint 'B' schedule property is part and parcel of Sy.No.35/4 situated at Tarikere village,

Kasaba Hobli, Tarikere Taluk which is originally belongs to one Lakshamma and same was purchased by plaintiff through registered sale deed dated 02/01/2012.

3. As per plaintiff he came to know that, the defendants encroached the plaint 'B' schedule property after podi sketch prepared by the surveyor by name R.Purushotham to said report was marked on behalf of plaintiff. After cross examination of P.W. he went and enquired in the office of survey department for summoning the said R.Purushotham to prove the survey report prepared by him. Unfortunately the said Purushotham had dead. Hence, the plaintiff could not able to summoning him to prove the said survey report.

4. Further the plaintiff has stated that, the survey department conducted the durasti at plaint A schedule property and new number assigned as Sy.No.35/7 in place of 35/3 of Tarikere village. His property is identifiable. Hence, to adjudicate the matter finally and effectively between the parties it is necessary to appoint a surveyor as court commissioner attached to the office of Tahasildar, Tarikere to measure and find out the

encroachment of plaint 'B' schedule property. Hence, present application.

5. On other hand, the counsel for the defendant has filed objection to the I.A. stating that, in the present case, the case is posted for further evidence of plaintiff and on last date of hearing the cross of P.W.1 is taken as nil and posted to further evidence and the defendants intend to recall the P.W.1 for cross examination.

6. Further, defendants stated that, the plaintiff is not known about his property and he is not in possession of the schedule property. In this stage, it is necessary to complete the evidence, then only court can decide the subject that, whether the appointment of court commissioner is necessary.

7. Further the defendants stated that, they have purchased the property in the same survey number and they were in possession of said property. Hence, prayed for reject the I.A. on cost.

8. Heard both side and perused the materials in hand.

9. The following points are arise for consideration:-

1. Whether the plaintiff is made out sufficient ground to allow the application?

2. What order?

10. Findings on the above points are as follows:-

Point No.1 : In the affirmative

Point No.2 : As per the order for the following:

REASONS

11. **Points No.1** : The plaintiff has filed present suit for declaration and possession. In the present I.A. the plaintiff has sought the appointment of surveyor as court commissioner attached to the office of Tahasildar Tarikere to measure and find out the encroachment of plaint 'B' schedule property. According to plaintiff, he came to know that, the defendant encroached the plaint 'B' schedule property after podi sketch prepared by the surveyor by name R.Purushotham. The said report was already marked in the present case as exhibit. To examined the said surveyor R.Purushotham, the plaintiff could not able

to summoning him as he had died. Therefore the plaintiff has sought appointment of surveyor as a court commissioner to measure the suit schedule properties and file the report same.

12. On other hand the I.A. is resisted by the defendants stating that, at this stage the I.A. filed by the plaintiff is not maintainable as the stage of the case is plaintiff evidence. After completion of the plaintiff evidence court can decide, with regard to appointment of commissioner if necessary.

13. On perusal of Ex.P.6, the surveyor has given the report with regard to measurement of the suit schedule property and reported with regard to encroachment of the schedule property. Now the plaintiff has sought, appointment of surveyor as court commissioner as earlier surveyor had died.

14. In the present case, the stage is for plaintiff evidence and suit for declaration and possession and the plaintiff intended to furnish the evidence with regard to encroachment of the schedule property by filing the surveyor report and examining the surveyor. By considering the nature of the suit and facts of the case,

the opinion of this court is that, on the basis of report of the surveyor, court can ascertain the actual controversy between the parties. The surveyor report is helpful to ascertain the encroachment if any in the suit schedule property. Hence, it is just and proper to allow the application filed by the plaintiff for appointment of surveyor as court commissioner. Accordingly, this court answered point No.1 in the affirmative.

15. Point No.2:- For the above reasons and answer given to the point No.1, proceed to pass the following:-

ORDER

I.A.No. 14 U/O.26 Rule 9 of CPC filed by the plaintiff is hereby allowed.

The surveyor attached to the office of the Tahasildar, Tarikere is appointed as court commissioner.

The commissioner fee of Rs.1,000/- is fixed.

The plaintiff shall pay the commissioner fee of Rs.1,000/- and both parties shall furnish the memo of the instruction.

The both parties are directed to co-operate the suit proceedings for

OS.No.288/2012.

speedy disposal of the case as the case
was already 7 years old.

(Dictated to the stenographer, transcribed by her, corrected
by me and then pronounced in the open Court on this the day of
29th May 2019.)

Sd/-

**(RAMAMURTHY N.)
ADDL.CIVIL JUDGE & J.M.F.C.,
TARIKERE.**

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