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

Present: Sri Shivakumar.R. B.A.L., LL.B.,
Addl. Civil Judge & JMFC, Tarikere.

Dated: 10th Day of July 2023

ORIGINAL SUIT NO.234/2015

PLAINTIFF/s :

R.Govindappa S/o Rangappa, aged 67 years, Agriculturist, R/o Bettadahalli Village, Kasaba Hobli, Tarikere Taluk, Chikkamagaluru District.

(Reptd. By : Sri GVK/SVA, Advocate.)

Vs.

DEFENDANT/s:

Sunandamma W/o Malleshappa, D/o Bheemappa, aged 47 years, Household work, R/o Behind Maggadmane, K.E.B. Road, Police Ningappa Layout, Tarikere Town and Post, Tarikere Taluk, Chikkamagaluru District.

(Reptd. By : Sri T.N.M., Advocate.)

PARTIES TO I.A.NO.XIV

Applicant/s : R.Govindappa

Vs.

Opponent/s : Sunandamma

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**ORDER ON I.A.NO.XIV**

When the matter is set down for arguments on merits, the plaintiff has filed this I.A.

2. The plaintiff has filed the instant I.A., under Order XXVI Rule 9 r/w Section 151 of CPC with prayer be pleased to appoint the Executive Engineer, Municipality, Tarikere as court commissioner to measure the suit schedule property and also to measure the house illegally constructed by the defendant in the suit schedule property and to submit the report and sketch by allowing the application.

3. The I.A., is annexed with the affidavit of the plaintiff. It is stated in the affidavit that he has filed the suit against the defendant for the relief of declaration and recovery of possession in respect of suit schedule property. It is further stated that the plaintiff has purchased the suit schedule property through the registered sale deed dated 03.09.2010. In pursuance of the registered sale deed the khata of the suit

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schedule property was mutated in his name and also given the site number of the suit schedule property as 65. It is further stated that the defendant has owned the site bearing No.66. In the year 2012 the defendant has constructed the house in the suit schedule property in stead of his property. It is further stated that the defendant has admitted that he has constructed the house, but he has denied that he has not constructed the house in the suit schedule property. In order to ascertain in which property the defendant has constructed the house, it is just and necessary to appoint the court commissioner for proper adjudication of the matter. If this application is not allowed, the plaintiff will be put to great hardship and injury. On the other hand, if this application is allowed, no hardship will be caused to the other side. Hence, this I.A.

4. The copy of the I.A., served to the other side. The defendant has filed detailed objections and resisted the I.A.,

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filed by the plaintiff and interalia contended that the I.A., filed by the plaintiff is not maintainable either in law or on facts and further contended that the plaintiff has filed this I.A., only to drag on the proceedings. It is further contended that the evidence of the parties is already over and hence, at this stage the measurement of the property is not necessary to dispose the case on merits. It is further contended that there is no boundary dispute between the parties and the plaintiff is not known as to where his property is situated. Only after filing of this suit taking the assistance of this court to ascertain his property. The plaintiff has filed this suit only with an intention to knock of the property belongs to the defendant. It is further contended that the plaintiff has filed this application at this stage only with an intention to protract the proceedings. For all these grounds, the defendant prays for to reject the I.A., filed by the plaintiff with exemplary cost.

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5. Heard arguments of both side.

6. On perusal of the materials placed on record, the following points that would arise for my consideration are :

- 1) Whether the I.A.No.XIV filed by the plaintiff under Order XXVI Rule 9 r/w Section 151 of CPC is deserves to be allowed?
- 2) What order?

7. My 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

8. **POINT NO.1** : On perusal of the materials available on record, the plaintiff has filed this I.A., when the matter is set down for arguments on merits for appointment of the court commissioner to measure the suit schedule property and to measure the house illegally constructed by the defendant in the suit schedule property and submit the report. It is the urge of the plaintiff that he has purchased the

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suit schedule property by virtue of the registered sale deed dated 03.09.2010, in pursuance of the registered sale deed the khata of the suit schedule property was mutated in the name of the plaintiff, the property of the plaintiff is given as site No.65. The defendant has owned site No.66, she has constructed the house in the plaint schedule property instead of her property. Therefore, it is just and necessary to appoint the court commissioner to ascertain in which property the defendant has constructed the house.

9. On the other hand, the defendant has contended that the plaintiff has filed this application only with an intention to drag on the proceedings and also to knock of the valuable property which is belongs to the defendant. There is no valid ground made out by the plaintiff in the I.A. Hence, the defendant has sought for to reject the I.A.

10. On perusal of the materials available on record, admittedly the plaintiff has filed this suit against the

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defendant for the relief of declaration and recovery of possession in respect of the suit schedule property. In the instant suit, the evidence of both sides were concluded. The plaintiff has filed this I.A., for appointment of the court commissioner to measure the suit schedule property and also to measure the defendant's house illegally constructed by him in the suit schedule property. At this juncture, I would like to refer Order XXVI Rule 9 of CPC which reads as follows :

In any suit in which the court deems the 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.

11. In the instant suit, the plaintiff claims that the defendant has constructed the house in his property, but the defendant has contended that she has constructed the house in her property. The issue involved in this case for determination is that, whether the defendant has constructed

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the house in the property of the plaintiff or not. In order to ascertain the same and to come to the conclusion with regard to the above fact and also for effective and proper adjudication of the matter, this court is of the considered view that appointment of court commissioner as sought in the I.A., is necessary. For considering all these reasons, I answer the Point No.1 in the Affirmative,

12. **POINT NO.2** : In view of my findings on Point No.1, I proceed to pass the following :

ORDER

I.A.No.XXIV filed by the plaintiff under Order XXVI Rule 9 r/w Section 151 of CPC is hereby allowed.

The Executive Engineer of Municipality, Tarikere is appointed as a court commissioner to measure the suit schedule property and also the house of the defendant alleged to be constructed in the suit schedule property and submit the report.

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The court commissioner fee is fixed at
Rs.3,000/-.

For furnish of memo of instructions by
both parties, call on 24.07.2023.

(Dictated to the Stenographer on computer, typed by her, corrected by me and
then pronounced in the open Court, on this the day of 10th day of July 2023.)

Sd/-

(SHIVAKUMAR.R)
ADDL.CIVIL JUDGE &
J.M.F.C., TARIKERE.