

IN THE COURT OF THE CIVIL JUDGE AND JMFC
AT YELANDUR

Present : SRI MADHUSUDHANA D.K. B.A., LL.B.,
Civil Judge and J.M.F.C, Yelandur

Dated : This 7th day of August 2017.

O.S.No.31/2012

Plaintiff: Madegowda

V/s

Defendants: Hotte Madegowda and others

ORDERS ON I.A.No.8

The plaintiff files the I.A.No.8 under Order 26 Rule 9 read with Section 151 of CPC and seeks the appointment of the Taluk Surveyor as the Court Commissioner for measurement of the suit schedule property and to submit the report of the Court Commissioner.

2. In support of the I.A.No.8 the plaintiff files his affidavit.

The plaintiff states on oath that, his father is the plaintiff and his father gives General Power of Attorney to him in the suit. The

above suit is filed against the defendants seeking the relief of declaration of ownership and recovery of possession over the B schedule property. The said property is situated in Sy.No.622/4A measuring 1 acre 28 guntas. The plaintiff purchases the said property on 14.03.1996 under a registered sale deed. The defendants caused encroachment of 3 guntas. At the time of construction of the house of the first defendant, the said 3 guntas property was encroached by the defendants.

3. Therefore, the said 3 guntas are called as suit B schedule property. The suit B schedule property is included in the suit A schedule property. However, the defendants contend in their written statement and in the affidavit evidence that, the B schedule property belong to Grama Thana.

4. The defendants also file O.S.No.111/2011 seeking Permanent Injunction in respect of Assessment No.31/2 measuring 58x78 feet. In the said suit, the defendants contend that, the Assessment No.31/2 was converted for non-agricultural purposes

and it also belongs to the Grama thana. Therefore, to ascertain the said facts, the appointment of Court Commissioner is necessary. For these reasons, the plaintiff prays for allowing his I.A.No.8.

5. The defendants file their objections to the I.A.No.8. The defendants contended that, they have constructed their house in the assessment property coming within the jurisdiction of Grama Thana and therefore, the prayer for appointment of Taluk Surveyor for measurement as prayed by the plaintiff is not maintainable. The defendants never encroach the property of the plaintiff. The plaintiff contends that, he acquires the suit schedule property under a registered sale deed in the year 1996. But, the defendants are in possession and enjoyment over their house and sites as ancestral properties and the Village Panchayath Officials issues Assessment copies in the year 1980 itself. Therefore, the defendants pray for rejecting the I.A.No.8.

6. The Court hears the arguments on I.A.No.8. After appreciating the facts and circumstances of the above case, the following points are arisen for consideration.

1. Whether the plaintiff shows that, it is necessary for the Court to appoint the Taluk Surveyor as the Court Commissioner for measurement of the suit schedule property for arriving just conclusion in the above matter?

2. What Order?

7. The Court answers the above points are as follows:

Point No.1: In the Negative.

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

R E A S O N S

8.Point No.1: The plaintiff files the above suit seeking declaration of ownership over B schedule property and for Permanent Injunction to restrain the defendants from interfering with his possession over A schedule property. The plaintiff files this case on 25.02.2012. As on today the suit completes 5 years and 5 months. On 06.06.2017 this Court allows the I.A.No.7 filed by the plaintiff for correction of the West boundary of the suit A

schedule property. In the said amendment the plaintiff changes **Ningaiah and plaintiff's B schedule property to another property of the plaintiff** on the West boundary of the suit A schedule property in his plaint.

9. The plaintiff pleads that, he acquires the suit A schedule property under a registered sale deed dated 14.03.1996. The plaintiff himself produces the Ex.P6. The Ex.P6 is the sketch prepared by the Taluk Surveyor in respect of A schedule property. Therefore, it appears to the Court that, on the basis of the Ex.P6, the plaintiff is claiming alleged encroachment of suit B schedule property caused by the defendants.

10. On the other hand, the defendants contend that, their property is situated in Grama Thana and their houses and sites are assessment properties. Since the defendants request the Court to go through the oral evidence of the parties and therefore, it is necessary for the Court to consider the boundaries furnished to the suit A schedule property and the oral evidence of the parties.

11. The plaintiff gives East boundary of the suit A schedule property as bounded by land of sons of Basavegowda, West by another property of the plaintiff, North by Ningaiah and the B schedule property and South by the land of Kadamma and the plaintiff's another property. The plaintiff contends in his pleadings that, the defendants are trying to construct their house on the North-East of the suit A schedule property. Within the boundaries of the suit schedule property, the plaintiff has not pleaded the existence of the defendants' properties.

12. In the cross-examination of the plaintiff, he denies the suggestion that, he has made an application for cancellation of Janger No.33 and property No.31 belongs to Basavegowda as false. But, he admits that, he has seen the assessment copy of said Basavegowda as true. When it is suggested to him that, the Village Panchayath Officials have not opened the khatha as per his application and therefore, he files an Appeal to the Taluk Panchayath. Then the plaintiff admits the said suggestion as true.

13. In the cross-examination of the DW1 the plaintiff's Counsel suggests to the DW1 that, 12 ankanas house of the first defendant is the ancestral property for the first defendant. The DW1 admits the said suggestion as true. Therefore, the non-mention of existence of defendants property within the four corners of the suit A schedule property and the admission of the first defendant's property being the ancestral property by way of suggestions put in the cross-examination, the plaintiff did not make out any good reasons for the appointment of Surveyor for measurement of the suit B schedule property.

14. The plaintiff himself admits that, Basavegowda who is having property on the East of the suit A schedule property is khathedar of janger No.33 and property No.31 and the plaintiff also admits for having seen the assessment copy of the said Basavegowda as true. Therefore, the said admission of the plaintiff shows that, the property on the East of his suit A schedule property and the properties of defendants are existed in

the assessment registers maintained by the Village Panchayath. Then the plaintiff admits the jurisdiction of the Village Panchayath over these properties and they come within the assessment properties. The plaintiff seeks appointment of Surveyor for measurement of his agricultural property. At the same time, the plaintiff admits the properties of the defendants as situated within the jurisdiction of the Village Panchayath.

15. The plaintiff himself produces the certified copy of the Survey sketch as per Ex.P6. Therefore, the plaintiff can very well rely on the said Ex.P6 for proving of any encroachment if caused by the defendants. Since the suit is pending for the past $5\frac{1}{2}$ years and therefore, the plaintiff does not show any good reasons for the appointment of the Court Commissioner as claimed in the I.A.No.8. For these reasons, **the Point No.1 is answered in the Negative.**

16. Point No.2: For the above discussions, I proceed to pass the following:

ORDER

I.A.No.8 filed by the plaintiff Under Order 26 Rule 9 r/w Section 151 of CPC is hereby rejected.

Case is posted finally for arguments on 14.08.2017.

(Dictated to the Stenographer and transcribed by him, revised, corrected and then pronounced by me in the open Court on this the 7th day of August 2017)

(MADHUSUDHANA D.K.)

Civil Judge & JMFC.,
Yelandur.

mksr/*