

ORDER ON I.A. No.I

This application filed by the plaintiff under order 26 rule 9 R/w 151 of CPC praying the court to appoint the PDO, Mudigere Grama Panchayath and Assistant Engineer, PWD Channagiri, as court commissioner to measure the suit property.

2. In support of the application the plaintiff No.2 sworn an affidavit contending that, this suit against the defendants seeking the relief of declaration and permanent injunction in relating to the suit property. The defendants are also consented to appoint the court commissioner to measure the plaintiffs suit schedule property to find out encroachment. Thus, prays to allow the application.

3. Per contra, the defendants filed objection stating that the plaintiff sought the appointment of the court commissioner to effect the petition schedule property as per the preliminary decree. But the present case of the plaintiff for the relief of declaration and possession. Thus, the application is not maintainable.

4. The defendant is in possession and enjoyment of the property bearing katha No.182/5 situated at Muddenahalli Village, Channagiri Taluk and one M. Basaiah Swamy purchased said property from B.M. Onkarappa and others for valuable consideration and afterwards khatha was been mutated in the name of the M. Basaiah Swamy and he obtained license to construct the house in K.No.182/5 of Muddenahalli Village and also

constructed the house as per approved plan and estimation. The said M. Basaiah swamy constructed the RCC building in the year 2000 in the boundary which was shown by the panchayathi authorities. It is pertinent to note that all along the construction of the building from basement to finishing level the adjacent owners including the plaintiffs are present during the course of construction of building. It is pertinent to note that there were no document to establish the actual extent and boundaries with respect to land alleged to have been purchased by Onkarappa and others. Moreover there is no approved plan to ascertain the actual extent and location of the schedule property moreover the description of the property is not proper and correct. Moreover the schedule property is not showing any extent alleged to have been encroached by defendants. It is submitted that the defendants not made any encroachment in the schedule property belongs to the plaintiffs and prayed to dismiss the application.

5. Heard,

6. The points that arise for my consideration is as follows.

POINTS

1. Whether appointment of commissioner is necessary at this stage in the case on hand?
2. What order?
7. My answers to the above points as under.

POINTS

Point No.1 : does not survive at this stage

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

REASONS

8. Point No. 1 :- This application has been filed at initial stage, that to, at the time when the case is posted for plaintiff evidence. As this court finds that the same is at very premature stage for consideration and as such kept the application in abeyance till further orders is necessary. Wherein the evidence of the both parties are not still commenced and they have not put forth their evidences in the present case.

9. The **Order 26 Rule 9** explores the opportunity to both the parties to seek the aid expert to get the real picture before the court. The certain limitations are attached to said provision. To sum up the said limitations are, if the evidence available on record is not sufficient enough to conclude to the facts in issue effectually, then the need of appointment of commissioner would arises. Therefore, it is absolutely just and necessary to consider the application in the light of, whether the available records are not sufficient enough to conclude lis between the parties. In the present case also still the evidence of both parties are not yet recorded. Thus, it is premature stage to consider the present application. Hence, it is necessary to kept the present application in abeyance still conclusion of trial.

10. **Point No.2:** Hence, the following order:

ORDER

**The IA No.1 filed by the plaintiff
U/o 26 Rule of 9 CPC., is hereby
kept in abeyance still completion of
evidence from both side.
For plaintiff evidence
Call on:23.01.2025.**

**II Addl Civil Judge And Jmfc.,
Channagiri.**

