

IN THE COURT OF THE PRL. CIVIL JUDGE & JMFC.,
AT HONNALI.

Dated on this 10th day of February 2025.

PRESENT:

Sri. Devadas H. B.A. LL.B.,
Prl. Civil Judge & JMFC.,
Honnali.

O.S.No.151/2017

PLAINTIFF : Sri.Rama Naik deceased Rep. By
his legal heirs
V/s

DEFENDANT : Sri. Mallesh Naik

I.A No-XVI

Applicant/ : Sri. Mallesh Naik
Defendant

V/s

Opponent/ : Sri.Rama Naik deceased Rep. by
Plaintiff his legal heirs

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ORDER ON I.A.No.XVI

At the stage of arguments the defendant filed the present application under Order XXVI Rule 9 of C.P.C, praying to appoint the court commissioner for measure the suit schedule property by allowing the application.

2. The reasons assigned in the affidavit annexed to the application are that the suit schedule property is the vacant site and the plaintiff has produced some created documents

produced before this court and the Panchayath development officer has issued a endorsement stated that there is no mutation entry with regard to the suit schedule property. The defendant has stated in his argument as well as his evidence with regard to the boundaries, it is just and necessary to allow the application. If the application is allowed no prejudice or hardship would be caused to the other side, on the other hand same is not allowed the defendant will be put to untold hardship. Hence prays to allow the application.

3. Per contra, the plaintiff filed objection, wherein he has denied the entire averments made in the affidavit accompanying to the application. In addition to that he has contend that, the defendant has filed the application is not valid one and this is suit for permanent injunction, in this suit number of Khaneshumari is different. Presently the suit is one for permanent injunction and also posted for argument and defendant has already completed his side of argument. By that time the defendant has come up with this application with regard to drag on the proceedings of this court and he has not made out any grounds for appointment of Court commissioner. Hence sought for dismissal of application.

4. Heard arguments on sides.

5. After going through the averments made in the affidavit and objection statement following points are arise for determination of this Court:-

1. Whether the defendant has made out sufficient grounds for appointment of Court commissioner?

2. What order ?

6. This Court has answer to the above points are as under:-

Point No.1 : In the Negative.

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

R E A S O N S

7. Point No.1 : The learned Counsel appearing for the plaintiff as well as defendant have argued vehemently by reiterating the contentions taken in the Course of their respective pleadings.

8. The scope of Order XXVI Rule 9 of the CPC is very limited. In any suit in which a local investigation is required or proper for the purpose of elucidating any matter of dispute may appoint a Commissioner. It is settled law that, the parties are required to prove their own case by way of evidence, therefore it is the duty of plaintiff/defendant to first give evidence in support of their case. After the evidence of parties, if Court deems it proper that any issue requires clarification then the Court may appoint a Commissioner. The report of Commissioner is merely a piece of evidence and not binding on the court. It can be used for the purpose of appreciating the evidence came on record. The main object of Order XXVI Rule 9 of CPC is not to assist a party can procure the same. An Advocate Commissioner can be

appointed under Order XXVI Rule 9 of CPC inter-alia for elucidating any matter in dispute. No doubt, before appointing an advocate commissioner, Court shall examine pleadings, relief claimed and real controversy between parties. Court has to keep in mind there from to decide whether there is an actual necessity to appoint Court commissioner to decide any real controversy between parties. No doubt Court Commissioner cannot be appointed for making an inquiry about factum of possession of the property in dispute, which is nothing, but fishing of information and not elucidating any matter in dispute.

9. Further before discussing the present case in hand this Court has relied upon the order passed by the ***Hon'ble High Court of Karnataka Kalaburagi Bench in W.P.NO.201274/2022 (GM-CPC) in between Sri Shadaksharappa S/o Veranna and Kumari Vijayalaxmi D/o Pampanna and Others*** wherein specifically discussed that as under :-

"21. Having examined the provisions referred to above and given the fact that Order XXVI of the Code of Civil Procedure is often invoked in the trial court, this court is of the view, broadly speaking in the following cases, the appointment of an appropriate Commissioner as provided under Order XXVI of the Code is desirable.

(i) The dispute relating to the easement of air, light, pathway, road, watercourse, etc.

(ii) The dispute relating to the boundary, encroachment;

- (iii) The dispute relating to forgery;
- (iv) The dispute relating to the existence or otherwise 23 watercourse, road, pathway, pollution, or nuisance.

10. With this prelude this Court has discuss the case on hand. Upon hearing the arguments advanced by the Counsel for the plaintiff and defendant and on perusal of the records it reveals that the defendant has filed the present suit against the defendant for the relief of permanent injunction.

11. Through this application the defendant seeking an appointment of Court Commissioner in order to local inspection of the suit schedule property in order to ascertain the boundaries and the extent. Further the plaintiff has instituted the present suit seeking for permanent injunction over the suit schedule property and thereby the initial burden is casted upon the plaintiff that he is in peaceful possession and enjoyment over the suit schedule property as on the date of the filing of the suit and the defendant is interfere with his peaceful possession and enjoyment over the suit schedule property as on the date of the filing of the suit. The said aspect has to be proved by him by adducing the oral as well as documentary evidence. The plaintiff has already adduced oral as well as documentary evidence to substantiate their respective pleadings.

12. It is settled law that the parties are required to prove their own case by way of evidence. In order to elucidating the facts in respect of the matter in dispute the evidence adduced by the parties itself is sufficient to this court for come to the

proper conclusion regarding the matter in issues. The Court commissioner will be appointed only in a peculiar nature of the matter in dispute both the parties documentary or oral evidence cannot be led into. But, in the present case on hand, the oral and documentary evidence adduced by the rival parties are enough to answer issues, which were already framed. There is no ambiguity in the evidence adduced by the parties. In such being the case there is no need to appoint Court commissioner as prayed by the plaintiff. Under these circumstance this court does not find any reason to consider the application filed by the defendant. Hence, this Court has answered the above point in the Negative.

13. Point No.2 : In view of findings on Point No.1, this court proceed to pass the following:-

ORDER

The I.A.No.XVI filed by the
defendant's Under Order XXVI Rule 9
of C.P.C. is hereby dismissed.

No order as to costs.

(Dictated to the stenographer through on-line computer, typed by her, corrected by me and then pronounced in the open Court today the 10th day of February, 2025)

(Devadas H)

Prl. C.J & JMFC., Honnali

