

14.02.2025

ORDERS ON MEMO DATED 23.01.2025
FILED BY PLAINTIFF

Counsel for plaintiff has filed this memo stating that, the plaintiff has filed this suit seeking the relief of permanent injunction against the defendant claiming right of road in plaint 'B' schedule property. But, the defendant is denying the said right. The plaintiff along with plaint had filed IA No.III for appointment of court commissioner to hold local inspection and to file a report. If the said application is allowed, it would minimize oral evidence. Hence, prays to hear the said application and suitable order may be passed before recording of evidence.

2. Counsel for the defendant has filed objection by stating that, the memo is not maintainable either under law or on facts. This suit was posted for evidence and the plaintiff instead of leading evidence filed this memo seeking appointment of commissioner before evidence. It is a settled law that, for collection of evidence, commission cannot be issued. So also pre-trial commission is not maintainable under law. Now the plaintiff has made alternations in the suit property. Therefore, no purpose will serve, if the commissioner is appointed at this

stage. If the evidence on record is not sufficient, then only the commission may be appointed. Hence, prays to dismiss the application with cost.

3. Heard and perused.

4. It is the contention of the plaintiff that, through this suit, he has claiming right of road in plaint 'B' schedule property. But, defendant is denying the said right of the plaintiff. Therefore, the plaintiff prays to hear the IA No.III, which was filed for appointment of court commissioner to hold local inspection and to file a report and suitable order may be passed before recording of evidence. But the defendant oppose to allow the said memo by contending that, now the plaintiff has made alternations in the suit property. Therefore no purpose will serve, if the commissioner is appointed at this stage. Moreover, if the evidence on record is not sufficient, then only the commission may be appointed. On perusal of order-sheet it is found that, the evidence not yet commenced. Hence, by considering the memo and objection filed by the parties, this court opines that, IA No.III will be considered after conclusion of evidence of the both parties. Accordingly, this court proceeds to pass the following;

ORDER

**IA No.III filed under Order XXVI
Rule 9 and Sec.151 of CPC by the
plaintiff is kept in abeyance.**

For plaintiff evidence finally as last
chance.

Call on : 15.03.2025

Sd/-

Civil Judge & JMFC,
Moodbidri