

02/03/2023

ORDERS PASSED EXERCISING POWERS U/O 26 R-
10-A of CPC

1. Both suits, i.e., OS 282/2017 and OS 259/2017 have been clubbed by previous order.

2. In O.S.259/2017, one Umesh and Manjunath are the plaintiffs and Basavaraj Adivappa Kabbinaad is defendant No.8. In O.S.282/2017, Basavaraj Kabbinaad Adivappa is the plaintiff and Manjunath Pujar is defendant No.3, Umesh Reshmi is defendant No.6. Earlier O.S.259/2017 was filed by Umesh and Manjunath and later, Basavaraj filed the case with respect to the same property. Therefore, both cases were clubbed.

3. The contention of the plaintiffs in O.S.259/2017 is that there is a road, which is measuring 15 feet in width, towards southern side of CTS No.1959 and 1960. It is pertinent to note that even in O.S.282/2017, Basavaraj Kabbinaad, who is the plaintiff has sought for injunction restraining the defendants from not causing obstruction to the compound wall, which is sought to be built in CTS No.1959 and 1957, which is towards the northern side of this road. It is the case of Basavaraj Kabbinaad that he has purchased the CTS No.1959 and 1957 from its earlier owner through a registered sale deed dated 25/01/2014 and Mallappa Gangavva, Manjunath, Sangappa and Renavva, who are defendant No.1 to

5 in this case are said to be the owners of the property bearing CTS No.1958 and 1951.

4. The only dispute is with respect to whether there exists any public road on the southern side of CTS No.1969 and 1959 and if there is road, what is its width and length.

The advocate for the plaintiff in O.S. 282/2017 has produced a approved lay out plan wherein, the said plan has been shown to be approved by the Director of Survey Settlement of Land Records. It is seen from the map that towards the southern side of CTS No.1959, there exists empty space which extends midway till CTS 1960. And towards the southern side of CTS No.1960, there is an inverted V space, which is shown in the survey map. Towards the southern side of CTS No.1960 and 1959 and the said space, there are four sites which are numbered as CTS No.1945, 1947, 1948 and 1951. The only grievance of the plaintiffs in O.S.259/2017 is that the defendant No.8 Basavaraj Adivappa Kabbinaad has not left any set-back in his property and he is obstructing the said passage and thereby he is restricting the movement of the neighbouring site owners of CTS 1957 and CTS 1958 and thereby causing hindrance. Therefore, they have sought for declaration to declare that the said passage is a public road.

5. Today, the case was posted for cross of P.W.2 in O.S.259/2017 and the said witness has been fully cross-examined.

6. After the cross-examination of P.W.2, both learned counsels submit that the dispute is with respect to the said road, which is said to be towards the northern side of CTS No.1945, 1947, 1948 and 1951 and southern side of CTS 1959 and CTS 1960. The submission of the learned counsel for the plaintiffs in O.S.259/2017 is that if there is no passage, then it would cut the movement of the plaintiffs to the main road and thereby it would cause hardship to the plaintiffs in O.S.259/2017. It is also seen that there are numerous criminal cases between both the parties and there are two civil cases, with respect to the said passage. Therefore, in the interest of justice, in order to bring quietus to the litigation, this Court has deemed it fit that, if the Court Commissioner is appointed, for the purpose of inspection, then a clear picture would emerge, which would elucidate the subject matter in dispute.

7. The advocate for both the parties in both the cases, have filed a memo separately, giving their consent, stating that if the Court Commissioner is appointed to ascertain the width and the length of the said passage and also with respect to the exact location of the said passage, then it would elucidate proper picture of the subject matter.

8. Therefore, this Court deems it fit that a local investigation should be done by a Court Commissioner, preferably through the City Surveyor. Hence in the facts and circumstances of this case, this Court proceeds to pass the following :

ORDER

Therefore, acting Under Order 26 Rule 10-A of CPC, the Chief City Survey Officer, Ron Town is appointed as the Court Commissioner, for the purpose of making a local investigation.

The said Court Commissioner shall visit the spot and he shall prepare a detailed sketch as it exists on the ground-level , showing the exact location, of the properties bearing CTS 1960, 1959, 1945, 1947, 1948, 1951, 1958, 1957 and the road if any, in between the CTS 1959 & 1960 and CTS 1945, 1947, 1948, 1951.

MEMO OF INSTRUCTIONS

The following memo of instructions SHALL be followed by the Court Commissioner in carrying out the commission work.

1. The Court Commissioner shall give notice to all the adjacent land owners and to all the parties in this case, before proceeding to the location at least 7 days before making the inspection.
2. The Court Commissioner is directed to ascertain as to what is the exact location and the measurement

of CTS No.1960, 1959, 1957, 1956, 1958, 1951, 1948, 1947 and 1945.

3. The Court Commissioner is also directed to verify if there is any vacant space towards the northern side of CTS No.1951, 1948, 1947, 1945 and towards the southern side of CTS 1959 and CTS 1960.
4. The Court Commissioner is also directed to verify what is the extent of these sites , when the plan was approved by the Town Planning Authorities.
5. The Court Commissioner shall prepare the detailed survey sketch, showing the actual possession of all the adjacent land owners, as it stands on the date of his visit.
6. The Court Commissioner shall take sufficient photographs of the said spot, at the time of his visit , so as to produce them before the court, along with his report.
7. All the parties in the both the suits are directed to co-operate with the Court commissioner without making any obstructions or objections, to the Commissioner from carry out his work.
8. The Court Commissioner shall take into consideration the title deeds of all the parties , if he

encounters any doubt regarding the location of the properties.

9. Any error or mistake in the title deeds, of all the parties, if any shall be separately discussed in the report.
10. The fee of the Court Commissioner is tentatively fixed at Rs.2,000/- each and both the parties shall deposit the same before the Court within next date.
11. Office is directed to send the copy of the plaint, written statement and other documents, which are produced before the Court, at the expense of both the parties, to the Court Commissioner. Both the parties shall bear the said copying expenses.
12. The Commissioner shall carry out his work in adherence to the said memo of instructions, and file his report , **on or before 05/04/2023.**

Office to send a copy of this order to the Court Commissioner along with the warrant.

Call on to deposit the amount by both the parties by
06/03/2023

Addl. Civil Judge and JMFC, Ron.