

**IN THE COURT OF THE ADDL. CIVIL JUDGE
& J.M.F.C
AT HOLENARASIPURA**

PRESENT : Sri.Arun Chougule.,
B.A. LL.B.(Hons.)
Addl. Civil Judge and J.M.F.C.,
HOLENARASIPURA

Dated this the 9th day of October, 2017

O.S.NO.341/2013

Plaintiff/s :- M.Giddegowda S/o
Late Marigowda

(By Sri.R.D.R.Advocate)

-V/s-

Defendant/s:- Sri. Veerabhadrapa @ Rajappa
and another

(By D.1 to 2 Sri.M.K.D., D.3 by A.J.V
Advocates)

:: In IA.No.VI::

Applicant/Plaintiff/s :- Sri.T.S.Shivalingappa
S/o Late Sannappa

-V/s-

Opponents/Dfendant/s :- Javaramma W/o
Thirumalannaiah and others

ORDERS ON IA.No.VI FILED BY THE PLAINTIFF**U/O.16 RULE 7, R/w SECTION 151 OF C.P.C**

This is an application filed by the plaintiff under Order 16 Rule 7 R/w section 151 of C.P.C, seeking order of this court to summoned taluk surveyor by name Swamy to given evidence on behalf the plaintiff.

2. The plaintiff has sworn to an affidavit filed along with the application stating that the person named in the application has assisted the court commissioner in execution of the commission work and has marked boundaries of the suit property during execution of commission work. Therefore, plaintiff stating that evidence of the said taluk surveyor is necessary in the present case and hence prays to summon the said person as witness to give evidence and to produce document mentioned in the application pertaining to Sy.No.8/1 and 8/39 situated at Holenarasipura village.

3. Heard both counsel. On perusal of material available on record and after hearing counsel for both parties, the following points arise for my consideration.

**Point No.1:- Whether the application filed under
Order 16 Rule 7 R/w section 151 C.P.C
deserve to be allowed?**

Point No.2:- What order?

4. My findings on the above points are as under:

Point NO.1:- In the Negative

**Point NO.2:- As per final order,
for the following:**

REASONS

5. **Point No.1:-** This is a suit filed for the relief of mandatory and permanent injunction and the plaintiff filed I.A.NO.III under Order 26 Rule 9 seeking appointment of Court commissioner to measure the suit property and property of defendant NO.1 and to prepare the map. The said application came to be allowed and Court commissioner was appointed for the purpose mentioned in the application. Thereafter, the court commissioner submitted report stating that he could not execute commission work as the plaintiff failed to produce documents pertaining to the suit property, which are necessary in the execution of commission work. The commissioner has also mentioned in the said report that at the time when he visited suit property the plaintiff, defendant and the taluk surveyor Swamy were present at the spot. He further stated that taluk surveyor has marked the boundaries of Sy.No.8/1 as per the original documents pertaining to the said property. On perusal of I.A.NO.III seeking appointment of court commissioner and order passed by this court on the said application it is noticed that, there was no direction to the commissioner to mark the boundaries but the direction was only to measure and prepare the map of the suit property and property of the defendant No.1. The plaintiff in the present application is seeking order to summon the said taluka

surveyor who marked boundaries of the suit property. When there was no direction for the commissioner to mark the boundaries the said act done by the taluk surveyor is of no value. Moreover, the report submitted by the commissioner is not a complete report but on the said report is merely in the nature of intimation given by the commissioner to this court stating that he could not execute the commission work since the plaintiff failed to produce documents pertaining to the suit property which were necessary for execution of the commission work. Therefore, when the report itself is not complete and is not at all a commissioner report in strict sense, this court is of the opinion that it is not necessary and desire as to summon the commissioner or the person who assisted the commissioner to give evidence regarding the work executed and report submitted by him. Therefore, this court is of opinion that the present application cannot be allowed and hence point No.1 is answered in the negative.

6. **Point No.2:-** In view of my discussion on point No.1, this court has passed the following order:

ORDER

The IA.No.VI filed by the Plaintiff
under Order 16 Rule 7, R/w Section 151 of
C.P.C is hereby dismissed.

No order as to cost.

(Arun Chougule)
Addl. Civil Judge and JMFC,
Holenarasipura.