

**ORDERS ON IA No.VII FILED U/O 26 RULE 9
OF CPC**

The plaintiff has filed this application under Order 26 rule 9 of CPC seeking appointment of Engineer of Town Municipality as court commissioner to conduct local inspection and to submit his report.

He has sworn to an affidavit, wherein he has stated that he has filed this suit for relief of declaration and mandatory injunction. Further evidence of both parties is completed and the

stage is for arguments and at this juncture the defendant has encroached eastern portion of suit schedule property and in order to find out the extent of encroachment it is proper to appoint engineer of Town municipality and accordingly submits to allow the application.

On other hand, defendant has filed objection submitting that the stage of this case is for arguments on merits and at this stage the application is filed and the same is not maintainable. Further the plaintiff has filed the suit for relief of mandatory injunction without seeking relief of declaration and on that ground also application is not maintainable. Further if at all the appointment of court commissioner is essential then plaintiff could have filed this application earlier, but due to lack of bonafide reason he has filed the same at the stage of argument and accordingly submits to dismiss the application.

Perused available materials on record, the points that arise for my consideration are;

1. Whether the plaintiff has made out grounds to appoint court

**commissioner U/o.26 rule 9 of
CPC?**

2. What order?

Heard both side, I have answered the **Point No.1 In the Affirmative** for the following:

REASONS

Point No.1: The plaintiff has filed this suit for relief of mandatory injunction and permanent injunction, wherein in para No.2 of the plaint he has clearly stated that the defendant has encroached eastern side of suit schedule property and thereby he has dig foundation to construct wall and the same is denied by the defendant and with respect to the same issue No.2 is framed casting burden on the plaintiff and accordingly evidence of both parties is completed and after completion of evidence the present application is filed and it is well established principle that commission under Order 26 Rule 9 can be appointed if the oral or documentary evidence led by both parties is not sufficient to arrive at proper conclusion and for that reason the proper stage to file application for appointment of court commissioner is after

completion of evidence and accordingly plaintiff has filed this application at right stage. Further no doubt in this case both parties have led their oral evidence and also they have got marked document in support of their case, but however the same is not helpful for the court to arrive at proper conclusion in order to find out encroachment and extent of encroachment and for that reason appointment of court commissioner is just and essential to arrive at proper conclusion and accordingly **point No.1 in the Affirmative and** in view of above discussion, proceed to pass the following:

ORDER

The IA No.VII under Order 26 Rule 9 of CPC filed by the plaintiff is hereby allowed.

The Engineer of Town Municipality is appointed as court commissioner with commission fee of Rs.2,000/- to be deposited in the office.

Office is directed to issue
commission warrant to Engineer of
Town Municipality.

No order as to costs.

(ANIL PRAKASH M.P.)
Prl. Civil Judge & JMFC,
Holenarasipura