

OS 211/2021 dated 28.06

ORDERS ON IA FILED ORDER 26 RULE 9 OF THE CODE OF  
CIVIL PROCEDURE

The 2<sup>nd</sup> Defendant has filed the present application seeking appointment of the Tahasildar and the ADLR as Court Commissioners for measuring the suit property and to identify the haddubastu of the Defendants' property and to submit a report to the Court.

2. The Learned Counsel for the Plaintiff would submit that he has no objections to the application being allowed.

3. Having heard the learned counsel for the parties the points that arise for my consideration are

*1. Whether the prayer of the Defendant No.2 for appointment of a Commissioner could be entertained at this stage?*

*2. What order?*

4. My answer to the aforesaid point is in the *Negative* for the following;

### REASONS

5. At the outset it is to be noted that the present suit is one for the relief of declaration of the Plaintiff's title and consequential relief of injunction in respect of the suit property. When the matter has not even reached the stage of the conclusion of trial, the question of appointing a Court Commissioner does not arise. Reference in this regard may be had the dictum of our Hon'ble High Court in *Renuka Vs. Thammanna* reported in *ILR 2007 KAR 3029*, wherein it has been held as under;

*7. It is settled position of law that Court Commissioner cannot be appointed to collect evidence in support of a claim. After completion of evidence on both the sides, if it is found that there is any ambiguity in the evidence adduced by the parties, then the Court may appoint a*

*Commissioner for the purpose of clarification of such an ambiguity. In the instant case the evidence is not yet commenced and therefore the question of ambiguity in the evidence will not arise at this stage. The Trial Court without considering the settled position of law committed an error in passing the impugned order appointing a Court Commissioner. On this ground the impugned order is liable to be quashed.*

6. Again our Hon'ble High Court in ***B.S. Sheshappa and others vs B.S. Chandrappa and others*** reported in 2015 SCC OnLine Kar 6413 has held as under;

*3. It is no doubt true that generally the Commissioner is appointed after recording the evidence depending on the facts and circumstances of each case. It is ultimately the need of the Court inasmuch as*

*the appointment of the Commissioner is not for collection of evidence.*

7. Evidently the question of appointing the Commissioner would be one that would arise *after* the conclusion of the trial and in the event the available oral and documentary evidence *at that point of time* appears to the Court to be insufficient for adjudication of the matter in dispute or there appears to be ambiguity in the evidence. Further it is for the Court to feel the necessity of a Commissioner to be appointed and there is no vested right in the parties to seek for an appointment of a commissioner. Reference in this regard may be had to the judgment of our Hon'ble High Court in the case of Mrs. Jayamma vs Mrs Shylaja reported in **2016 SCC OnLine Kar 3929** wherein it has been held as under;

*4. The submissions of the learned counsel have received my thoughtful consideration. It is trite that nobody can*

*claim the appointment of the Court Commissioner as a matter of right, it is the discretion of the Court. On examining the oral and documentary evidence placed on its record, the Trial Court has come to the conclusion that the evidence placed on its record enables it to adjudicate the matter.*

Therefore notwithstanding the '**No Objection**' given by the Plaintiff, in the light of the mandate of the Honb'le High Court question of appointing a Court Commissioner at this nascent stage does not arise. Consequently I Pass the following:

**ORDER**

The Application seeking appointment of Court Commissioner is dismissed. Call on 27.07.2022 for Plaintiff evidence.

**(PRAVEEN.R.J.S )**  
CIVIL JUDGE, HOLENARSIPURA.