

KAHS810001562025



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O.S. No. 22/2025

IN THE COURT OF ADDL CIVIL JUDGE AND JMFC.,
SAKALESH PURA

:Present:

SRI LAKSHMI NARASIMHA R.V, B.A.L., L.L.B.,

Addl. Civil Judge & JMFC., Sakaleshpura.

Dated this the 26th day of March, 2025

O.S. No. 22/2025

Plaintiff : Smt. Radha

V/s

Defendants : Smt. Kamala and others

I.A.No.III

Applicant : Smt. Kamala

V/s

Opponent : Smt. Radha



ORDERS ON APPLICATION FILED BY THE
DEFENDANT ORDER XXVI RULE 9 OF CPC

The defendant has filed this application under order XXVI Rule 9 of CPC, for appointment of ADLR, Sakaleshpura Court Commissioner to make local inspection and submit report as to existence of suit schedule property when the matter is posted for hearing on IA No.II.

2. In the affidavit, defendant No.1 has stated that the plaintiff has filed present suit for the relief of permanent injunction. The erstwhile owner of the plaintiff and defendant are one and the same. The plaintiff has tried to construct the house in the property the defendant. As such, she has filed a suit vide O.S.No.16/2025 against the plaintiff herein. When the earlier owner sold the same property in favour the plaintiff, the defendant has lodged a complaint before the Sakaleshpura Rural Police and he has undertaken to repay the amount and agreed to stop the construction work. The property of plaintiff is not at all in existence. The plaintiff is trying to construct the house in the property of



the defendant. Hence, it is necessary to appoint the court commissioner to submit report as to existence of suit schedule property. Hence, prayed to appoint the court commissioner by allowing the application.

3. The plaintiff has filed objections to the application and contended that the defendant has filed this application only with intention to drag the proceedings when the matter is posted for herein on IA No. II. The defendant has filed this application only with intention to identify her property. The plaintiff is the owner in possession of the suit schedule property and constructing the house. She has not encroached the property of the defendant. Accordingly, prayed to dismiss the application.

4. Heard arguments.

5. In light of the above contentions, the infra points that would arise for my consideration.

1. Whether the defendants have made out a case to appoint a court commissioner as prayed for?



2. What order?

6. 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::

7. **Point No.1::** This is a suit for the relief of permanent injunction against the defendant in respect of the suit schedule property.

8. The plaintiff has contended that she is the absolute owner in possession of the suit schedule property. On the other hand, the defendant has contended that suit schedule property is not at all in existence and the plaintiff is trying to put up construction in the property the defendant. It is to note here that in so far as existence and possession of the suit schedule property, the burden is on the plaintiff to prove her case independently. The Aid of Court Commissioner with respect possession and existence cannot be taken. The defendant has not explained as to the reasons



for appointment of court commissioner as the burden is on the plaintiff to prove her possession and existence of suit schedule property. In the case on hand, issues have not yet been framed. Hence, at this stage it is premature to consider the present application. The court commissioner can be appointed when there is ambiguity in the evidence. The stage has not yet reached.

9. At this stage, this Court would like to rely upon a decision passed by *Hon'ble High Court of Karnataka in ILR 2007 KAR 3029 = AIR 2007 KAR 133, Miss Renuka V/s Thammanna and others, the Hon'ble High Court of Karnataka* has held that **“Court commissioner cannot be appointed to collect evidence in support of a claim. After conclusion of evidence on both the sides, if it is found that there is any ambiguity in the evidence adduced by the parties, than the court may appoint a commissioner for purpose of clarification of such an ambiguity”**. In the background of above decision, coming to the present case, evidence has not yet been commenced. As



held by Hon'ble High Court of Karnataka, a court commissioner cannot be appoint for the purpose of collecting evidence. In view of the above, this court is having no other option but to reject the application as there is no ambiguity. Accordingly, point No.1 in ***Negative***.

10. Point No.2: For the above discussed reasons, this court proceeds to pass the following:

::ORDER::

The application filed by the defendant under order XXVI Rule 9 of C.P.C. is hereby dismissed.

[Dictated to the stenographer directly on computer and then corrected by me and thereafter pronounced in the open court on this the 26th day of March, 2025]

[Lakshmi Narasimha R.V,]
Addl. Civil Judge and JMFC,
Sakaleshpura.