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O.S.No.107/2020

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 : 24th Day of March, 2025

O.S. NO. 107/2020

Plaintiff : Sub-Registrar, Sakaleshpura

V/s

Defendant : The President,
Karnataka State Government
Employees' Association and
another.

**ORDERS ON APPLICATION No. VI FILED BY THE
PLAINTIFF UNDER ORDER XXVI RULE 9 OF CPC**

The plaintiff has filed application under order XXVI Rule 9 of CPC, for appointment of Court Commissioner to make local inspection of suit schedule property for the purpose of measuring and fixing the boundaries when matter is posted for plaintiff evidence.

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2. In the affidavit, the Sub-Registrar, Sakaleshpura has stated they have filed present suit for the relief of permanent injunction. The plaintiff is in possession of suit schedule property to extent of East-West 44 feet and North-South 21 feet since 1980 for public purpose. As it was in dilapidated condition, they shifted to private building in the year 2013. Now, the defendants are causing obstructions to the possession of the suit schedule property. The building of defendants is situated towards northern side of the suit schedule property. If the Commissioner is appointed, both the disputes would come to the conclusion. Hence, it is necessary to fix the boundaries of the respective properties by measuring the same. Hence, prayed to appoint the court commissioner by allowing the application.



3. The defendants have filed objections to the application and contended that the ADLR has no authority to measure the suit schedule property within the jurisdiction of Town Municipality. The defendants are in possession of the suit schedule property situated towards northern side of the suit schedule property. The Town Municipality has measured the properties and given documents accordingly. The defendants have never encroached the property of the plaintiff. 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 plaintiff has 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 *Affirmative*

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 defendants in respect of the suit schedule property.

8. It is pertinent to note here that the plaintiff has sought for appointment of court commissioner with respect to measurement and fixation of boundaries. Now the only question is whether the parties have encroached any property are not. Thus, it is clear that the boundary dispute is in question with respect to the properties of plaintiff and defendants.



9. In a decision of Hon'ble High Court of Karnataka reported in **2023 (3) ICC 57 (Karnataka)** it is held that, it is just and necessary to appoint the Court Commissioner in respect of the dispute of encroachment. It is to note here that the present application is not with respect to appointment of commissioner for the purpose of determining the possession of the parties. However, the present application filed only to submit report with respect to measurement and boundaries of the suit schedule property and encroachment if any.

10. In **2014(2) KCCR 1652**, Hon'ble High Court of Karnataka held that ***“only if the plaintiffs are able to show that the defendants have encroached upon their property, they would be entitled to the relief. Any amount of oral evidence is not a substitute or sufficient to prove the encroachment. To cut short the litigation to***



reduce recording evidence, the trial Court in its wisdom, thought it fit to appoint a commissioner even before the commencement of the trial. That is how the duration of the litigation could be curtailed and speedy disposal of the Civil matter could be achieved.”

11. In ILR 2001 KAR 5013, the Hon'ble High Court of Karnataka held that *“in a suit for injunction wherein parties allege encroachment of property, where correct extent and boundaries of the property are in dispute. It is just and necessary that a survey has to be conducted and the boundaries of the properties are to be identified, in such a situation, appointment of Commissioner should not be mistaken for collecting evidence.”*

12. In view of the above decisions, if present case is discussed, it is clear that the crux of issue is with respect to



alleged encroachment and boundaries. On perusal of the application, it is clear that the proposed appointment of the Court Commissioner is not for the purpose of collection of evidence as to the possession, but only with respect to measurement and boundaries. In view of the above, in order to curtail the duration of litigation, this court of the opinion that the application deserves to be allowed. Hence point No.1 in *Affirmative*.

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

::ORDER::

IA No.VI filed by the plaintiff under Order XXVI rule 9 of CPC is hereby allowed.

An Advocate is hereby appointed as Court Commissioner to make local investigation for the purpose of executing work as enumerated in the application.

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The Court Commissioner shall take the Assistance of Taluk Surveyor to conduct the spot inspection and enumerate the work.

Both the parties are directed to file respective memo of instruction in furtherance of the work to be executed as sought for as per the application.

The Commissioner fee is fixed at 3,000/-.

[Dictated to the stenographer directly on computer and then corrected by me and thereafter pronounced in the open court on this the 24th day of March 2025]

[Lakshmi Narasimha R.V,]
C/c. Civil Judge and JMFC.,
Sakaleshpura.